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EDITORIAL

At the annual meeting of the Board of Editors of THE HISPANIC AMERICAN HISTORICAL REVIEW held at Providence, R. I., on December 28, Dr. Charles W. Hackett of the University of Texas was elected to fill the vacancy caused by the expiration of the term of Dr. W. W. Pierson, Jr. The thanks of the board are due to Dr. Pierson for his ready and efficient services; and the board anticipates an equal participation in its work from Dr. Hackett who has already served as a member of its body for two periods.

THE ADVISORY LAW COMMISSION OF CUBA

For more than three years following the Spanish-American War the United States was in full charge of Cuban affairs. Generals John R. Brooke and Leonard Wood governed the island and took steps to prepare the people for self-government. On May 20, 1902, the Republic of Cuba, having adopted a constitution and accepted the Platt Amendment, became an independent state.

The first administration of President Don Tomás Estrada Palma was free from armed uprisings, but following his reelection as a moderate over José Miguel Gómez, a liberal, a series of revolts broke out against the government. Finding that he could not restore order, Estrada Palma on September 8, 1906, requested the government of the United States to send two battleships to Cuba.¹ On September 13, the Cuban government advised the government of the United States that it would resign and requested military intervention.² President Theodore Roosevelt replied by ordering a warship to Cuba, and by sending Secretary of War William H. Taft and Assistant Secretary of State Robert Bacon to the troubled island as peace commissioners. These gentlemen failed to effect a compromise and on September 28, 1906, the Cuban president, vice-president, and all members of the cabinet resigned. A quorum of congress could not be assembled, and since the country was without government, Secretary Taft, acting under Article III of the Platt Amendment and with the approval of President Roosevelt, took charge in the name of the United States.³

¹ William H. Taft and Robert Bacon, *Cuban Pacification*. An excerpt from the report of the secretary of war, 1906 (Washington, 1907), p. 444.

² *Ibid.*, p. 446.

³ Taft and Bacon, *op. cit.*, p. 463. Taft had accepted intervention as the only practicable solution, but Bacon had wanted to uphold the Estrada Palma

On October 13, 1906, President Roosevelt named Charles E. Magoon, former law officer of the Bureau of Insular Affairs and former United States minister to Panama, provisional governor of Cuba. Aside from the routine duties of administration the provisional government under Governor Magoon restored peace and order, supervised an extensive program of internal improvements and public works, held elections, and drafted needed laws for the republic.⁴ Of all its achievements, the last named was perhaps the most important and lasting work of the second intervention.

The advisory law commission which prepared these laws had its origin in the causes of the August revolution of 1906. Various causes have been assigned for this revolt which led to United States intervention. One witness stated, "The uprising had no other object than to oust those who occupied certain desirable posts, in order to seat other men".⁵ The peace commission stated, "The cause of the insurrection is to be found primarily in the election methods which were pursued in carrying it for the Moderate party".⁶ The most objectionable election method in the eyes of the Cubans was the central government's unwarranted interference with the municipalities during the elections of 1905. General Faustino Guerra, a leader of the insurgent forces, declared that the purpose of the insurgents was "to reëstablish a reign of law".⁷

To these causes should be added the desire of the politicians to get at the surplus in the treasury, and the demands of the liberals for specific legal reforms. The demanded legal reforms, which had been approved by Taft and Bacon, called

government. He considered intervention to be contrary to Secretary of State Root's Hispanic American policy. See James Brown Scott, *Robert Bacon: Life and Letters* (New York, 1923), pp. 117-118.

⁴ Charles E. Magoon, *Report of Provisional Administration from October 31, 1906 to December 1, 1907* (Havana, 1908), p. 8 and *passim*. This work will hereafter be cited as Magoon, *Report*, I.

⁵ Irene A. Wright, *Cuba* (New York, 1910), p. 174.

⁶ Taft and Bacon, *op. cit.*, p. 456.

⁷ *Havana Post*, August 23, 1906.

for the enactment of the following laws: first, a municipal law which would meet the requirements of the Cuban constitution; second, an electoral law containing sufficient provisions to secure representation by the minority and providing for the conduct of elections under a non-partisan bureau which would have charge of the police during the registration and election periods; third, a law providing for the reorganization and increased independence of the judiciary; and fourth, a civil service law.⁸ It was hoped that such laws would insure good government, honest elections, and prevent future revolutions. It was to draft these and other laws that Governor Magoon on December 24, 1906, issued a decree establishing the advisory law commission.⁹

The commission consisted of nine Cubans and three citizens of the United States.¹⁰ Colonel Enoch H. Crowder of the United States army, who was then adviser to the acting secretary of the department of state and justice and legal adviser to Governor Magoon, was designated president of the commission by the provisional governor. Crowder was a graduate of the Law School of the University of Missouri and was known to be an indefatigable worker. He had been active in the judge advocate general's department and served as legal adviser to the military governor of the Philippines prior to his arrival in Cuba in 1906.¹¹

⁸ Magoon, *Report*, I. 21.

⁹ *Republic of Cuba, Under the Provisional Government of the United States, Decrees, 1906-1909* (9 Vols., Havana), Decrees of 1906, no. 284. Not all volumes and pages of this work are numbered and thus it will hereafter be cited as *Decrees*, and references will be made by years and decree numbers. All laws and orders were issued by the provisional governor in the form of decrees. The provisional government had declared vacant the seats of those congressmen elected in the fraudulent elections of 1905, and the remaining congressmen had been suspended with pay for the duration of the terms for which they had been elected.

¹⁰ *Decrees, 1906*, no. 284.

¹¹ *Monthly Bulletin of the International Bureau of the American Republics*, XXVI, Part 2, p. 774 (April 1908). On September 25, 1906, Taft wired his staff in Washington to send Crowder to Havana "with all useful professional books". Wire of Taft to Staff, War Department, September 25, 1906, Crowder

The Cubans appointed to serve on this commission were Alfredo Zayas, candidate of the Zayista liberals for president, a lawyer, orator, and member of the Cuban senate; Manuel M. Coronado, a leading member of the conservative party and the owner and editor of *La Discusión*; Francisco Carrera Jústiz, an independent in politics, a lawyer, author, and professor of municipal government in the national university; Marío. García Kohly, member of the conservative party, a lawyer, and member of the house of representatives; Felipe González Sarraín, a Zayista liberal, a lawyer, and member of the house of representatives; Rafael Montoro, an eminent statesman, orator, lawyer, and a member of the conservative party, who had been minister to England and Germany respectively; Erasmo Regüíferos Boudet, a Zayista liberal and a prominent lawyer of Santiago de Cuba; Miguel F. Viondi, a Miguelista liberal and a lawyer; and Juan Gualberto Gómez, secretary of the commission, a colored political leader, and editor of the Zayista organ *El Liberal*.¹²

The other United States members of the commission were Major Blanton Winship of the United States army, and Judge Otto Schoenrich. Winship had served as judge advocate and had had Philippine experience which fitted him for membership on this commission. Schoenrich was a member of Magoon's staff and had been a judge in Puerto Rico, where he had assisted in revising and compiling the laws of that island.¹³

The commission had hardly started its work of drafting the

Papers. These papers (restricted) are in the Library of the University of North Carolina at Chapel Hill. Crowder was judge advocate general when the United States entered the World War, and he drafted the selected service act. Later he had the rank of major general and served as minister and as the first United States ambassador to Cuba.

¹² *Monthly Bulletin of the International Bureau of the American Republics*, XXVI., Part 2, pp. 774-775 (April 1908).

¹³ *Ibid.*, II., Part 2, p. 775. Winship later had the rank of major general and served as judge advocate general. He is now (1937) governor of Puerto Rico. Schoenrich is a writer and international lawyer with offices in New York City.

laws requested by the liberals and approved by Taft and Bacon before it appeared that the whole body of Cuban law was in need of revision and codification. In 1907, Cuban law was a mixture which made analysis, logical interpretation, and honest enforcement difficult.¹⁴ The main body of the law consisted of provisions moulded on monarchical and centralized lines for Spain which had been extended to Cuba. These provisions, some of them archaic, had been amended and modified at various times by many royal orders and decrees. Added to this body of law were the orders and decrees of the United States Military Government, the Cuban constitution, the laws enacted by the Cuban congress, and the decrees of the provisional governor. Laws designed by a monarchical government for its colony failed to meet the needs of an independent republic. The Cuban congress, hampered by lack of experience and political dissensions, had failed to enact legislation required to give effect to the liberal and decentralizing constitution. To meet and remedy this condition, the scope of the advisory commission's activity was extended to cover other laws necessary to place the constitution in practice.¹⁵

The advisory commission started its work on January 3, 1907. The twelve men were divided into four sub-committees to study existing laws and to propose new legislation. They had to draft all laws to conform to the Cuban constitution as it was deemed impracticable to amend the constitution during the life of the provisional government.¹⁶ Crowder, Sarraín, and Montoro were on the electoral law committee; Zayas, Viondi, Carrera, Jústiz, and Winship were on the municipal and provincial law committee; Winship, Kohly, and Regüeyeros Boudet were placed on the civil service committee; and

¹⁴ Magoon, *Report*, I. 120 et seq.

¹⁵ Charles E. Magoon, *Report of Provisional Administration from December 1st, 1907 to December 1st, 1908* (Havana, 1909), p. 77. This work will hereafter be cited as Magoon, *Report*, II.

¹⁶ Letter of Crowder to Taft, January 13, 1907. *Crowder Papers*.

Schoenrich, Coronado, and Gómez were named to the judicial committee.¹⁷

Most of the work of the commission was done by the sub-committees, which studied, debated, and drafted proposed laws. Usually one member of the respective sub-committee prepared the first draft, incorporated the suggestions made by the other members, explained the draft at the meetings of the commission, and in general took charge of the proposed law. In accordance with this procedure, Crowder prepared the first draft of the electoral law, Carrera Jústiz the first draft of the provincial and municipal laws, Winship the first draft of the civil service law, and Schoenrich the first draft of the judiciary law.¹⁸ The finished work was presented to the commission as a whole, and then, after discussion and at times heated debates, the proposed law was adopted or amended or rejected. No project was sponsored by the commission unless it received a majority vote of all the commissioners.

The general public was given a chance to pass on the proposed laws and to suggest changes before they were put into force.¹⁹ After being approved by the commission, the proposed laws were printed in pamphlet form in Spanish and English and copies were sent for criticism to political parties, newspapers, corporations, and individuals throughout the island.²⁰ The commission later revised or modified a law in the light of such criticism and submitted it to the provisional

¹⁷ *Diario de Sesiones de la Comisión Consultiva* (4 Vols. Habana, 1908 and 1916), I. no. 1. Hereafter this work will be cited as *Diario*. This journal gives the proceedings of the commission's meetings. Unfortunately, no records were kept of the important proceedings and debates of the sub-committees. "These meetings were very informal, many of them at night and at the offices or homes of the members of the commission. Some of the Cuban members often missed meetings of the sub-committees, especially toward the latter part of the commission's work, when their political aspirations took much of their time". Letter of Judge Otto Schoenrich to the author, November 18, 1935.

¹⁸ Letter of Judge Otto Schoenrich to the author, November 18, 1935.

¹⁹ Magoon, *Report*, I. 22.

²⁰ Magoon, *Report*, II. 77; *Decrees*, 1909, nos. 568, 578, 599, 927, and 928.

governor for his approval. When approved, the new law was promulgated as a decree and as such it became a part of the permanent legislation of Cuba, subject to change only by the provisional governor or after his term by the duly elected Cuban congress. Public criticism of proposed laws was not a formal phrase, but criticisms were actually sought and considered by the commission on all projects. As a result of criticisms and suggestions made by the public, minor changes were made in practically all projects. The new electoral and municipal laws were revised and the telephone law was not enacted because of such criticisms.²¹

Taft's proclamation establishing the provisional government had stated that when peace, order, and public confidence were restored elections would be held to determine those persons upon whom the permanent government of the republic should devolve. Accordingly, the advisory commission first considered the framing of an electoral law as a preliminary to ending the intervention, and on December 30, 1907, a proposed electoral code was submitted to Governor Magoon. He directed that it be printed and distributed and fixed a period of thirty days within which suggestions or objections could be made in written or printed form.²² This requisite having been met, the proposed code was promulgated on April 1, 1908.²³ Following the provincial and municipal elections which were held in August, and as a result of further criticism, amendments were added and the law was promulgated in final form on September 11, 1908.²⁴

The electoral law was an elaborate code based on the

²¹ *Decrees, 1908*, no. 699; *Diario*, I., nos. 16, 17, and 18.

²² *Senate Document No. 80* (Sixty-first Cong., 1st Sess.), "Message from the President of the United States Transmitting a Communication from the Acting Secretary of War, submitting a Supplemental Report, with accompanying Papers of Honorable Charles E. Magoon, Provisional Governor of Cuba, for the Period from December 1, 1908 to January 29, 1909" (Washington, 1909), p. 16. Exhibit A of this report is the final report of the advisory law commission. Hereafter this document will be cited as Magoon, *Report*, III. The proceedings of the commission relative to the electoral law are in *Diario*, I. *passim*.

²³ *Decrees, 1908*, no. 331.

²⁴ *Ibid.*, no. 899.

Australian system. It provided for a system of permanent electoral boards which would be in charge of elections. Each municipality was to have a board of three members, each province a board of five members, and over these was established a central board of five members in Havana. Under this law each board would have two political members who represented the two leading parties. The non-political members were to be delegates from the high schools, or the university, or officials of the judiciary. The law abolished voluntary registration and provided that each board should keep a registration list, based on the census of 1907, of all persons entitled to vote and gave the boards authority to correct the lists throughout the year.²⁵

Article thirty-nine of the constitution provided that minority parties should be represented in the house of representatives and in provincial and municipal councils. The electoral law of December 25, 1903, had complied with this provision by granting

to one minority party, whether large or small, an arbitrary one-third of the number of seats, providing that each voter could vote for only two-thirds of the number of persons to be selected.²⁶

The end desired was seldom attained as majority parties, by presenting different tickets and by instructing their voters, would elect candidates for all the seats. To remedy this the advisory commission made a thorough study of proportional representation as it existed in Belgium and Switzerland, and drafted articles which gave effect to the constitution by providing for representation according to the number of votes polled by each party.²⁷ According to this plan each voter expressed his choice by voting for several candidates in the order of his preference. The total of all valid votes cast for all candidates was then divided by the number of places to be filled, and the quotient obtained determined the number of

²⁵ *Decrees*, 1908, no. 899, Article 14 *et seq.*

²⁶ *Magoon, Report*, II. 78.

²⁷ *Official Gazette*, Havana, April 1, 1908.

votes required for election. Those candidates having votes equal to or above the quotient were declared elected. By transferring surplus votes from those candidates elected on the first count to second and third choices, other candidates soon obtained sufficient votes to be elected to the remaining offices under the quotient figure required.²⁸

Chapter seven of the code provided that nominations should be made by official party conventions or by a fixed number of registered electors in the provinces. The numbers required for independent nominations ranged from eight hundred in the province of Havana to two hundred in Camaguey. All candidates, regardless of the method of nomination, were required to have nomination certificates which gave the name and emblem of the party or group supporting the candidate, the name and residence of the candidate, and the title and term of the office for which the nomination was made. The law further prescribed the methods whereby nominees might resign and vacancies could be filled.²⁹

Eligibility for public office in general was restricted to Cubans who could read and write and were in the full enjoyment of all civil and political rights. Candidates for president and vice president were required to have attained the age of forty years and to be citizens by birth or naturalization. In the latter case the candidate must have served Cuba under arms at least ten years in the wars for independence. To be a senator or delegate to a constitutional convention the candidate had to be thirty-five years of age and a Cuban by birth. Representatives were required to be twenty-five years of age and Cubans by birth or naturalization. In the latter case the candidate must have resided in Cuba eight years following his naturalization. The requirements for presidential and senatorial electors were similar to those for representatives.³⁰ Requirements for provincial and munic-

²⁸ *Decrees, 1908*, no. 899, Article 192.

²⁹ *Decrees, 1908*, no. 899, Article 99 *et seq.*

³⁰ Most of the requirements listed above were based on Articles 46, 49, and 65 of the Cuban constitution of 1901.

ipal offices were not prescribed by the electoral law, but were fixed by the provincial and municipal codes.³¹

The new law provided that all male Cubans over twenty-one years of age who were properly registered, except insane persons, those disqualified by reason of crime, and members of the land and naval forces, had the right to vote for candidates for the various elective offices. It also defined electoral divisions, fixed the dates for the holding of elections, indicated forms of ballots, established rules of conduct for elections in great detail, and prescribed lighter penalties for election offences in the hope that the law would be more strictly enforced.³² Finally, the electoral law of December 25, 1903, including all amendments and other provisions was repealed. The importance of the new electoral law lay in the great care and wealth of details with which the election machinery was set up—a contrast to the scanty and slipshod rules formerly prevailing. The new law provided for uniform elections throughout Cuba and greatly reduced the loopholes for fraud.

The conservatives on the commission, in view of the large proportion of illiterates in Cuba and the large Negro element in the population, wished to establish a system of plural votes based on educational and property qualifications. The constitution prevented direct restriction of suffrage and accordingly a plan was proposed which would have deprived no one of his vote, but would have granted as many as three votes to the individual who could have met the additional requirements. The liberals opposed plural votes for political reasons, but asserted that such a system would infringe article thirty-eight of the constitution which granted suffrage to all male Cubans over twenty-one years of age. They further stated that the evils complained of in previous elections could not be attributed to universal suffrage but to dishonest and corrupt enforcement of the existing law. After much discussion, the liberals with their pleas for universal manhood

³¹ *Decrees, 1908, no. 899, Article 10 et seq.*

³² *Decrees, 1908, no. 899, passim; La Discusión, Havana, February 25, 1909.*

suffrage won, and the plan for plural votes was rejected.³³

Another matter which provoked heated discussions within the commission and caused widespread discussion in Cuba was the question of granting the franchise to foreigners. It was proposed that aliens who had lived for more than five years in Cuba should be allowed to vote in municipal elections. The commission was flooded with letters and telegrams opposing any such extension of the franchise.³⁴ The liberals on the commission opposed this plan, and a compromise was reached whereby foreigners, while not permitted to vote, were made eligible for election to municipal councils.³⁵ Having thus disposed of the troublesome matters of plural and foreign votes, the commission quickly completed the project of the electoral law and turned its attention to organic municipal and provincial laws.

Municipalities are highly regarded by the average Cuban because they affect his daily life more than any other governmental agency. Any attempt to meddle with a municipality meets with resentment, if not open opposition. It was the central government's interference with the municipalities in the election of 1905 more than any other factor that caused the August revolution.

The municipal law of Cuba at the commencement of the second intervention was based on a Spanish law of 1877 which centralized control in the national authorities in Havana. The Cuban constitution which went into force on May 20, 1902, granted liberal local self-government. Confusion resulted as the Cuban congress, under Estrada Palma, refused to enact legislation to give effect to the constitution. Thus the inconsistent Spanish law prevailed over the constitution,

³³ *Diario*, I., nos. 14 and 15. For information on this and other points in this chapter the writer is indebted to Dr. Francisco Carrera Jústiz and Dr. Francisco de Paula Coronado of Havana.

³⁴ *Diario*, I., nos. 16, 17, 18, 28, 29, 31.

³⁵ *Magoon, Report*, II. 78. The municipal law which was drafted later provided that qualified foreigners could be elected councilmen and could be appointed associate members of council committees.

and the acts of the moderates in removing liberal municipal officials were legal but at the same time unconstitutional.³⁶ This legal problem was well known and every compromise plan following the August revolution had provided for a reformed municipal law which would be in agreement with the constitution.

While the electoral law was being framed, the advisory commission discussed an organic municipal law and at Magoon's suggestion kept in mind the drafting of a provincial law. These three laws were closely related and it was only natural that a discussion of one would bring out points relating to the other two. The proposed municipal and provincial laws were submitted to the provisional governor on January 24, 1908. Magoon ordered five thousand copies of each printed and distributed for study and criticism by the public.³⁷ The organic municipal law was promulgated on May 29, and became effective on October 1, 1908.³⁸

The municipal law organized the municipalities in harmony with the constitution, making them autonomous in purely local matters. The new law defined municipal districts and provided for their creation, fusion, segregation, and suppression. It divided municipalities into three classes determined by population: those above 100,000, those above 20,000, and those under 20,000. It also provided that the central government could supervise public work projects when it shared or paid the expenses of construction.³⁹

The new code reorganized municipal government by reducing the number of councilmen from thirty to a number not to exceed twenty-six. It refused suffrage to foreigners, but provided that when otherwise qualified they could be elected councilmen. It provided for the election of a president and

³⁶ F. Carrera Jústiz, *El Derecho Público y La Autonomía Municipal; El Fraude de un Régimen* (Habana, 1913), p. 50.

³⁷ Magoon, *Report*, III. 16. For proceedings of the commission relative to these laws, see *Diario*, I. *passim*.

³⁸ *Decrees, 1908*, nos. 568 and 907.

³⁹ *Decrees, 1908*, no. 568, Article 1, *et seq.*

secretary of the council and did away with deputy mayors, syndics, and associate members. Departments of secretary, treasury, and accountancy were ordered established in all municipalities to provide uniformity, and councils were given the authority to establish *barrio* or ward mayors whenever they deemed it necessary. The code regulated the appointment and discharge of employees and prescribed the duties of the various offices. Amounts to be spent on personnel were limited according to total budget estimates. Where budgets did not exceed \$10,000 a year, as much as fifty per cent could be spent for personnel, and in cases where the annual budget equaled or exceeded \$1,000,000 only nine per cent could be spent for personnel. These last provisions were undoubtedly designed to force the municipalities to live within their incomes and to check the custom of state aid so long relied upon.

The municipal law outlined governmental functions, ordinance powers, and provided for municipal coöperation with the provinces and the central government. The mayor was made independent of the council and his powers and duties were defined. The new code required at least four annual meetings of the council in addition to special sessions.⁴⁰

The eligibility requirements for the office of councilmen were designed to secure the best officials. A councilman had to be a Cuban by birth or naturalization, a resident of the municipality for one whole year prior to the election, twenty-three years of age, in the full enjoyment of political and civil rights, and able to read and write. Foreigners were required to prove a residence of five years in the country, one of which must have been spent in the municipality. They also had to have a family, operate a commercial establishment or practice a profession, pay required taxes, and possess the regular suffrage requirements. Those disqualified by judicial sentence, interest in contracts, or holding any other elective office could not serve as councilmen.⁴¹

⁴⁰ *Decrees, 1908*, no. 568, Article 42 *et seq.*; Carrera Jústiz, *op. cit.*, pp. 62-66.

⁴¹ *Ibid.*, Article 45 *et seq.*

The new code provided that municipal budgets should be effective without the approval of the treasury department of the central government as had been the custom in the past. It fixed tax rates, regulated loans, prescribed amounts of bonds to be given by treasuries, and limited special assessments to urban centers. Finally, it repealed the old municipal law of October 2, 1877, and all other legal provisions governing the organization and functions of municipalities.⁴²

While the municipal law was being discussed it became evident that local taxation was in need of reform. Municipal tax laws and collection procedures were still regulated by a variety of old Spanish laws, military orders, and regulations.⁴³ The new municipal law granted autonomy, yet the tax system of the country remained centralized. Consequently, the municipalities lacked taxes of their own to carry on the usual functions of local self-government. It had long been the custom for the national government to collect the major portion of all taxes and to collect a surtax for the benefit of the municipalities or to make grants from time to time of various sums to the municipalities. It was to remedy this situation that the law of municipal taxation was drafted by the advisory commission and decreed by Governor Magoon on September 21, 1908.⁴⁴

The municipal law was the substantive law; the municipal tax law was a regulatory law which set forth rules to carry the organic municipal law into effect. The tax provisions of the municipal law and the provisions of the municipal tax law attempted to make the municipalities self supporting by providing and clearly defining three sources of revenue:

(1) Land taxes, which the municipalities were authorized to collect on the income from real property within their territory. In the case of urban real property this tax might reach a maximum of 12 per cent of such income, and in the

⁴² *Decrees, 1908, no. 568, Article 186 et seq.*

⁴³ *Official Gazette, Havana, September 22, 1908.*

⁴⁴ *Decrees, 1908, no. 928.*

case of rural real property a maximum of 8, 6, or 4 per cent depending on the crops or other uses to which the land was devoted. Land committees were provided which would register all rural or urban property, make appraisements and assist the various treasuries in effecting collections.

(2) Industrial taxes, on the exercise of industry, commerce, professions, arts, and trades. The maximum tax was specified in most cases, but the taxpayers subject to any specific tax were authorized to distribute their quota of tax among themselves in proportion to their income from the business, thus lightening the burden of the small taxpayer.

(3) Miscellaneous taxes, including taxes on livestock transfers, slaughter of cattle, building permits, the inspection of weights and measures, and amusements.⁴⁵

Most of these taxes had previously existed in one form or another, but the new law, by coördinating them, designating more equitable rates, and providing more thorough collection methods, made such former sources more bearable and more remunerative. The new tax law listed all exemptions, fixed penalties, and provided for appeals through the mayors to the *audiencias*.⁴⁶ It gave all municipalities a uniform system of taxation and repealed the existing assortment of local tax laws. It was welcomed by taxpayers, courts, and lawyers alike because it gave the people "a fixed point from which to take their bearings, contrary to the existing chaos".⁴⁷

The advisory commission also found municipal bookkeeping in a disorganized state and decided that if the organic municipal law was to be effective, a new regulatory law of municipal accounting would be needed to supplement the law of taxation. The laws which governed municipal finances were based on antiquated instructions, rules, regulations, and military orders of various dates.⁴⁸ When the commission found that these could not be harmonized with the constitu-

⁴⁵ *Decrees, 1908*, no. 568, articles 216 to 220; and Decree no. 928, *passim*.

⁴⁶ *Decrees, 1908*, no. 928.

⁴⁷ *Official Gazette, Havana, September 23, 1908*.

⁴⁸ *Ibid.*, September 21, 1908.

tion, it proceeded to draft a new code which was based on experience and modern methods of accounting. The municipal accounting law, after having been criticized by the public, was submitted to Governor Magoon for his approval; and it was promulgated by him on September 21, 1908.⁴⁹ This law and the tax law became effective on the same date as the municipal law, October 1, 1908.⁵⁰

The accounting law specified how collections should be made and entered upon the books and how sums should be paid out of the treasury. The duties of mayors, auditors, treasurers, and other officials handling public funds were defined and penalties were fixed for violation of the law.⁵¹ The accounting law gave the municipalities a uniform system of budget making and bookkeeping. It repealed all old laws and regulations and brought municipal auditing into agreement with the municipal law and the constitution.

While the various municipal laws were being drafted, there was some talk of making Havana a national district. As complete nationalization of that city would have required a constitutional amendment, the matter was dropped. However, the municipal law did provide that sanitation and public order in the capital city should be under the immediate control of the central government.⁵²

The provincial law which, along with the municipal law was submitted to the provisional governor for consideration, was promulgated on June 2, 1908.⁵³ It was planned to correct abuses which existed under the provisional law passed by the Cuban congress on March 10, 1903. The old law was a bare skeleton, but the new act reorganized provincial governments and harmonized provincial and municipal law.

Under Spain the provinces were simply administrative divisions of the central government. Prior to the second intervention the Cuban congress had legislated generally and

⁴⁹ *Decrees, 1908*, no. 927.

⁵¹ *Decrees, 1908*, no. 927, *passim*.

⁵² *Decrees, 1908*, no. 578.

⁵⁰ *La Lucha*, Havana, October 1, 1908.

⁵³ Magoon, *Report*, II. 80.

the municipalities locally. As the whole of Cuba was covered by national and municipal jurisdictions there was little for the provincial authorities to administer or legislate upon except public works.⁵⁴ As a matter of fact the provincial budgets allowed more for personnel than they did for public works.⁵⁵ Unnecessary employees drew good salaries for little or no work. Consequently, the municipalities and the Cuban people urged and approved the reform of provincial governments because of the enormous waste.⁵⁶

The new organic provincial law equalized the budget by providing that expenses should not exceed the fixed revenues. Expenses for personnel were limited by a per cent ratio. Provinces whose budgets did not exceed \$50,000 could spend sums up to thirty-five per cent for personnel. Personnel expenses for provinces having budgets over \$300,000 were limited to twenty per cent. The new law reduced the number of councilmen from twenty to eight, abolished salaries, and provided that councilmen's compensation should not exceed ten dollars a day for actual attendance and mileage. The qualifications for the provincial councilmen were practically the same as for those of the municipalities, except that the age limit was increased from twenty-three to twenty-five years. The minimum age for the governor was also fixed at twenty-five years.⁵⁷

The new provincial law prescribed the duties of the governor and gave him the veto power. It outlined the functions of the councils which were limited chiefly to the making of provincial laws and the supervision of public works. Tax rates, budget regulations, and auditing methods were fixed by this code. Bonded indebtedness was limited to a sum not to exceed ten per cent of the total budgets of the province for the

⁵⁴ *American Journal of International Law*, III. 432 (January, 1909).

⁵⁵ The total provincial budget for 1906-1907 allowed \$316,308.00 for personnel and \$243,529.45 for public works. Small sums were allowed for scholarships. Magoon, *Report*, II. 81.

⁵⁶ *Official Gazette*, Havana, May 8, 1908.

⁵⁷ *Decrees*, 1908, no. 578.

previous five years. Finally, the old provincial laws were repealed and the decree provided that the municipal law, the municipal tax law, and the municipal accounting law should be supplementary to this act. The legislative powers of the provinces were not changed because they were fixed by the constitution.⁵⁸ The new law prevented much waste, but Cuban provinces have been a disappointment to both advocates of federal and unitary forms of government.

The advisory commission faced a difficult task in trying to draft a satisfactory judiciary law. The judicial system then in force was based on a Spanish law of 1891 which made the courts subordinate to the executive.⁵⁹ The Cuban constitution stated that the courts should be independent, but congress had neglected to legislate on this matter and accordingly the Spanish law remained in force. Thus the primary work of the commission was to draft a law which would free and protect the courts from executive interference. Crowder pointed out the need for a thorough revision of the civil code, the code of civil procedure, the criminal code, the code of criminal procedure, and the commercial code; but the commission realized that the duration of the provisional government would not permit it to complete such a tremendous task.⁶⁰ Crowder considered these reforms "essential to the maintenance of orderly and stable government", and recommended that reestablishment of the Cuban government should be contingent upon guarantees that this work would be brought to a speedy conclusion.⁶¹

The advisory commission, lacking time to make a thorough revision of the laws of procedure, in drafting the organic

⁵⁸ *Loc. cit.*

⁵⁹ *Official Gazette*, Havana, January 27, 1907.

⁶⁰ Magoon, *Report*, I. 134; *et seq.*; *La Discusión*, Havana, July 30, 1907; *Diario*, II., *passim*.

⁶¹ Magoon, *Report*, I. 139. Reforms were recommended but guarantees were not required when the United States withdrew on January 28, 1909, and little legal reform has taken place in Cuba since the second intervention. See Charles E. Chapman, *A History of the Cuban Republic, A Study in Hispanic American Politics* (New York, 1927), pp. 516-517.

judiciary law followed the general lines of the existing court system as they were the only ones compatible with the general legal system of the island. The new law brought the judicial system into agreement with the constitution by making the courts independent of other government departments. Decrees and laws inconsistent with the constitution were repealed and the various provisions of Spanish law, military orders, and acts of the Cuban congress dealing with judicial matters were compiled into one code.⁶² Judicial districts were designated, and the membership and functions of the supreme court, the audiencias, the municipal courts, the courts of first instance, and the correctional courts were defined. The code specified that all judges should be Cuban citizens over twenty-three years of age, and excluded undischarged bankrupts, those guilty of crime, and those who were physically or mentally disqualified. All judges were required to be licensed attorneys except municipal judges of the third class.⁶³

Under the new judiciary law the judges of the supreme court continued to be appointed by the president with the advice and consent of the senate, but other judges, except municipal judges, were to be appointed by the president from lists submitted by the supreme court. Judges thus appointed could be granted life terms by the supreme court if their services proved satisfactory. This law further provided that no judicial officer should be removed except by impeachment and conviction, and to cover such cases the law prescribed the proper procedure. It prescribed the oath of office, and fixed a scale of salaries for judges which ranged from \$8,000 a year for the president of the supreme court to \$1,500 a year for municipal judges of the second class. The office of municipal judge of the third class was declared to be gratuitous and honorary. The law also regulated suspensions, transfers, removals, and resignations of judges and court officials. Finally, it enacted

⁶² *Official Gazette*, Havana, January 27, 1909.

⁶³ *Decrees*, 1909, no. 127.

provisions regulating admissions to the bar and provided for the establishment of bar associations.⁶⁴

The proposed organic judiciary law was submitted to Governor Magoon on February 3, 1908, and by his order was printed and distributed for public considerations.⁶⁵ Criticisms were made and the commission, after considering the various suggestions, incorporated several changes and returned the law to Magoon for approval. Some felt that it went too far and others agreed with Crowder that it was only a belated beginning of necessary legal reform.⁶⁶ The judiciary law was promulgated by the provisional governor on January 27, 1909.⁶⁷

Much of the work of the advisory commission was taken for granted and viewed with indifference, but this was not the case with the civil service law. All who had public jobs and those who wanted such jobs, as well as their political chiefs and friends, became interested.⁶⁸ Hunger for jobs had done much to bring on the August revolution and Taft and Bacon had agreed to the need of civil service reform.⁶⁹ The decree creating the advisory commission had called for legislation on this important topic and thus it was with much interest that the officeholders and politicians awaited the publication of this new law.

On March 26, 1908, the project of the civil service law was submitted to the provisional governor.⁷⁰ Following his usual custom, Magoon ordered this law printed and distributed for public study and criticism. The new law which was modeled after that of the United States, declared that its object was "to establish and maintain an efficient and honest civil service in all departments and dependencies of the central,

⁶⁴ *Decrees, 1909, no. 127, passim.*

⁶⁵ Magoon, *Report*, III, 17.

⁶⁶ *Diario*, II., nos. 105, 107, and 113.

⁶⁷ *La Lucha*, Havana, January 27, 1909.

⁶⁸ *El Mundo*, Havana, April 17, 1907; *El Triunfo*, Havana, December 13, 1908.

⁶⁹ Taft and Bacon, *Cuban Pacification*, p. 461.

⁷⁰ Magoon, *Report*, III, 17.

provincial, and municipal governments of the Republic of Cuba".⁷¹ The advisory commission expressed the hope that the law would be the means of creating a permanent service of civil administration and that it would, to a large degree, free the administration from political influence.⁷²

The chief innovation of the law was the section providing for the establishment of a civil service commission of three members which would serve as an examining board, classify personnel, and determine appeals. It prescribed rules for examinations, distinguished between classified and unclassified services, gave a preference to veterans and their children, provided for pensions, and established rules governing dismissals, suspensions, and appeals. Most important of all, as far as the officeholders and politicians were concerned, was the provision that those holding jobs when the law went into effect were confirmed in their positions.⁷³ This provision naturally pleased those who held jobs and disappointed those who had hoped the new law would afford them immediate opportunity to get on the government payroll.

On January 11, 1909, Governor Magoon promulgated the law with the provision that it should go into effect at the beginning of the fiscal year, July 1, 1909.⁷⁴ This code supplied Cuba's need for a modern civil service law and provided the legal basis for a permanent civil service administration.

Prior to 1909, executive departments were operated largely by consent as there was little or no legal basis for their existence. Departments which had been established by Spain in 1897, when the new colonial system was put into operation, were continued and increased by the United States Military Government and the Estrada Palma administration. The constitution provided that the president should have a cabinet but it did not name the posts to be filled or prescribe the duties and powers of cabinet officials. Laws establishing

⁷¹ *Decrees, 1909*, no. 45, Article 1.

⁷² *Official Gazette*, Havana, January 18, 1909.

⁷³ *Decrees, 1909*, no. 45, *passim*.

⁷⁴ *La Lucha*, Havana, January 12, 1909.

executive departments and prescribing their functions had been considered by congress under Estrada Palma but nothing had materialized in the way of a positive code.⁷⁵ There was nothing in the compromise plans which were advanced during the August revolution that obligated the provisional government to consider the drafting of a law on this subject, but as it was urgently needed, Magoon, on November 4, 1907, ordered the advisory commission to prepare a law of the executive power.⁷⁶

On January 12, 1909, Governor Magoon promulgated the law of the executive power which had been prepared by the commission after a careful investigation had been made and after the bureau chiefs and others had given their views.⁷⁷ This law, the most extensive of all laws drafted by the commission, harmonized executive practice with the constitution, made legal provisions for cabinet posts, and rounded out the work started in the provincial and municipal laws.⁷⁸ It contained detailed provisions concerning the powers and duties of the president, the cabinet officials, and the principal officers of the various departments and bureaus. It established eight executive departments, namely: State, Justice, Government, Treasury, Public Works, Public Instruction, Sanitation and Charities, and the combined department of Agriculture, Commerce, and Labor. It provided for the impeachment of the president or any cabinet member and gave the president the power to appoint and remove freely all secretaries.⁷⁹

The new code fixed the salary of the president at \$25,000 a year, that of the vice president at \$12,000 a year, and established a salary scale for all other grades of personnel connected with the executive branch of the government. Provisions of the law also regulated national budgets, appropriations, tax collections, auditing methods, and contracts

⁷⁵ *Official Gazette*, Havana, January 27, 1909.

⁷⁶ Magoon, *Report*, II. 85.

⁷⁷ *La Discusión*, Havana, January 13, 1909.

⁷⁸ *Official Gazette*, Havana, January 27, 1909.

⁷⁹ *Decrees*, 1909, no. 78. Also see *La Discusión*, Havana, February 25, 1909.

for services and supplies. The law further provided that congress should proceed to elect a president in the case of vacancy, and it prescribed the oath to be sworn to by all presidential appointees. All orders, decrees, and laws inconsistent with the law of the executive power were repealed.⁸⁰ In addition to giving effect to the constitution, this code systematized the executive branch of the government and removed doubts as to duties and spheres of action which had caused overlapping, inefficiency, and at times friction between various executive bureaus and secretaries.

The first law of the advisory commission to go into force was the law of armed forces which was promulgated by Magoon on April 4, 1908.⁸¹ This law organized the armed forces of Cuba into the permanent army, the rural guards, and the militia. It provided that all male citizens between the ages of 21 and 45, unless physically disqualified or exempted by provisions of the law, should render military service in one branch of the armed forces in defense of the country. It also listed the number and rank of the various officers and prescribed pay schedules which allowed \$6,000 a year for the major general and \$252 a year for privates.⁸²

It was hoped that the creation of a sufficiently large body of trained forces would prevent outbreaks in the future similar to the August Revolution. The decree gave the president authority to unite all forces, if necessary, in defense of the country and its laws. Under this law General Faustino Guerra became commander in chief of the Cuban army and General Alejandro Rodríguez was placed in command of the rural guard.⁸³

After drafting the law of armed forces, the advisory commission was charged with the duty of drawing up laws relating to military crimes and procedure. Such laws were prepared and submitted to Governor Magoon on January 15, 1909, and both were put into force by decrees issued on Jan-

⁸⁰ *Decrees*, 1909, no. 78, *passim*.

⁸¹ *Decrees*, 1908, no. 365, *passim*.

⁸² *La Lucha*, Havana, April 6, 1908.

⁸³ *Decrees*, 1908, no. 366.

uary 18, 1909.⁸⁴ When the permanent army was organized it became necessary to have a penal code and a code of procedure which would define and punish the various offenses likely to be committed by members of armed forces. The military penal law and the military law of procedure were drafted to supply such needs. In preparing these laws the advisory commission attempted "to harmonize the exigencies of the strictest military duty and discipline, with respect to constitutional precepts. . . ."⁸⁵

The military penal law stated that every military act or omission punished by it would be considered a crime, and that the violation of military police orders would be considered a misdemeanor. The law listed various offenses from treason to participation in politics, and prescribed penalties ranging from a reprimand to death by a firing squad. Treason as defined included desertion to the enemy, inducing a foreign power to declare war against Cuba, furnishing the enemy with information concerning military affairs, and instigating any plot or conspiracy to lower the national flag on the occasion of a battle without orders from the commander. The code also recognized international law and prohibited unnecessary devastation, plunder, and pillage. It forbade duels and provided severe penalties for the issuance or acceptance of challenges.⁸⁶ This code supplied the republic with necessary and up to date provisions for the regulation of all military crimes and offenses.

Inasmuch as the penal law failed to include methods of procedure it was essential that a code of military procedure should be drafted as a supplement. The law which was drafted by the advisory commission and promulgated by Governor Magoon provided for courts of inquiry to examine acts imputed to officers and soldiers, and for courts-martial to try soldiers accused of offenses against the military penal law.

⁸⁴ *Decrees, 1909*, nos. 125 and 126.

⁸⁵ *Official Gazette, Havana, January 27, 1909.*

⁸⁶ *Decrees, 1909*, no. 125, *passim*.

It stated that questions of jurisdiction between military tribunals and civil courts should be determined by the supreme court. The law provided that the judge advocate of the court should prosecute all cases in the name of the Republic of Cuba and required the commanding officer to detail a suitable officer as counsel for the defense. It also allowed those accused to employ civil counsel at their own expense. Courts-martial were required to keep a complete and correct record of all proceedings in case the accused decided to appeal his case to a court of review. Only the president could authorize such appeals. Finally, this law repealed all orders, decrees, and regulations inconsistent with its provisions.⁸⁷ It supplied rules of procedure essential to the enforcement of the military penal law. Both laws combined scattered material into definite codes and gave Cuba enlightened military legislation of the highest type.

While various laws were drafted by the advisory commission in addition to those already mentioned, only one other, the game law, was promulgated before the end of the provisional administration. The new game law was signed by the provisional governor on January 18, 1909.⁸⁸ It repealed the law of 1879 and all decrees and orders in so far as they were opposed to this law. The law declared all wild animals to be the property of the state and gave the state authority to regulate all forms of hunting. It guaranteed the ownership of tame and domestic animals so long as they remained under the dominion of the owner. Songbirds, woodpeckers, swallows, vultures, and other birds considered helpful to man were protected against destruction. An open season was allowed on animals, birds, and reptiles considered injurious to man, such as wild dogs, wild cats, wild boars, sparrow hawks, hornbills, alligators, and snakes. The law required all hunters to have licenses, regulated the carrying of hunting arms, and prescribed penalties for infractions.⁸⁹ It recog-

⁸⁷ *Decrees, 1909, no. 126, passim.*

⁸⁸ *Official Gazette, Havana, January 22, 1909.*

⁸⁹ *Decrees, 1909, no. 67.*

nized the right of the state to conserve and regulate its natural resources, and showed that the commission recognized the importance of animals, birds, reptiles, and insects in the daily life of man.

The advisory commission drafted several laws which were not promulgated by Magoon, but which were submitted by him to the newly elected Cuban congress for consideration on January 28, 1909. These dealt with a wide range of subjects, including telephones, juvenile courts, notaries, mortgages, drainage and irrigation, and property registration.⁹⁰

The project of the telephone law, which was based upon one that had been vetoed by President Estrada Palma, was submitted to the provisional governor on May 12, 1908.⁹¹ The law did not have the unanimous approval of the commission; and, as it met with much public opposition because of telephone complications of long standing, it was not put into force but was referred, with all records, to the Cuban congress on January 28, 1909.⁹²

In preparing a drainage and irrigation law, the advisory commission made extensive technical investigations.⁹³ The final draft of this law was not complete when the commission terminated its work on January 15, 1909, and the provisional governor called this proposed law to the attention of congress in his final message for such action as that body deemed proper.⁹⁴

Proposed laws concerning notaries, juvenile courts, and destitute children, the creation of a war and navy department, and the revision of mortgage laws with respect to fees and registrations had been sponsored by one or more members of the advisory commission, but they were not favored by all and discussion of the same was not finished when the second intervention came to an end. Rough drafts of these laws to-

⁹⁰ *Diario*, IV., *passim*.

⁹¹ *La Discusión*, Havana, May 17, 1908.

⁹² Magoon, *Report*, III. 30.

⁹³ Magoon, *Report*, II. 85.

⁹⁴ *Ibid.*, III. 14.

gether with all pertinent data was turned over to the Cuban congress.⁹⁵

The laws thus far mentioned denote an enormous amount of work covering a wide field, but they do not constitute all of the work done by the advisory commission. The provisional governor, from time to time, called on the commission to prepare special decrees and reports. Some of the more important decrees thus drafted, which became laws, related to the census, civil code, department of sanitation, law of estates held in common, and judicial salaries. Other subjects dealt with by the commission, but which were not decreed as laws were trademarks, crop loans, and a land mortgage bank.⁹⁶

The immense amount of work done by the advisory law commission can only be briefly mentioned. From January 3, 1907, to January 15, 1909, the full commission held 330 sessions and the sub-committees held many more. Some 370 matters were started and finished by that body, and over 700 communications were received and some 1,171 were sent out. Some 3,000 petitions relating to proposed laws were received and all were acknowledged. The commission supervised the distribution of 19,000 copies of the electoral law, 12,000 copies of the municipal law, 6,500 copies of the provincial law, 2,000 copies of the judiciary law, 4,200 copies of the municipal tax law, 3,200 copies of the municipal accounting law, 2,000 copies of the civil service law, and 1,000 copies of the telephone law.⁹⁷ When it is considered that all members of the commission had other duties to discharge at the same time they were industriously drafting laws—the Cubans their private law practice, political campaigns, and other interests, and the representatives of the United States their regular duties in connection with the provisional government—it will be apparent how seriously they devoted themselves to their task.

The advisory law commission was officially dissolved on

⁹⁵ Data furnished by Judge Otto Schoenrich of New York City.

⁹⁶ Magoon, *Report*, III. 18-19.

⁹⁷ Magoon, *Report*, III. pp. 19-20.

January 27, 1909. On the whole its work met with widespread approval.⁹⁸ However, some few felt that the commission had gone too far and that the provisional government had no authority to decree such important legislation without the approval of congress.⁹⁹ The fact that most of the laws decreed by Governor Magoon have lasted to the present date with few changes bespeaks a just praise of the work done by the advisory law commission.¹⁰⁰

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⁹⁸ Rafael Martínez Ortiz, *Los Primeros Años de Independencia* (2 Vols., Paris, 1924), II. 483; *La Discusión*, Havana, February 25, 1909; *American Journal of International Law*, III. 431-434 (April 1909).

⁹⁹ Enrique Barbarrosa, *El Proceso de la República* (Habana, 1911), pp. 72-73; Aurelio Hevia, *Colección de Artículos y Documentos referentes a la Condición actual de Cuba* (Habana, 1908), *passim*; *El Triunfo*, Havana, January 9, 1909. In November, 1907, after Magoon ordered the advisory commission to consider laws in addition to those recommended by the peace commissioners, members of the Cuban rump congress, which had been dissolved, claimed that they represented the Cuban people and that they should have the right to draft needed laws. The provisional governor ignored the claim and no further protests were made. *The Cuban Interpreter*, I. 50 (November 12, 1907).

¹⁰⁰ Chapman, *A History of the Cuban Republic*, pp. 516-517. A Cuban member of the commission well summarized its achievements as follows: "With those laws of Mr. Magoon, which are still in force, the Republic has made notable progress for a quarter of a century. It was truly a work of the greatest consequence, accomplished during Mr. Magoon's short stay of only two years in Cuba, and it gave great prestige to his reputation as a wise and honorable executive". Letter of Carrera Jústiz to the author, September 14, 1934. The legislative program of the provisional government had not been completed when the intervention ended. Governor Magoon in his final message to the Cuban congress recommended that it create a commission similar to the advisory commission to revise the civil code, the law of civil procedure, the code of commerce, the law of public instruction, the law of eminent domain, the law of public works, the law of administrative contracts, the forestry law, the laws of mines and mining, and the patent law. Unfortunately, Magoon's advice was not followed and most of the above laws are still in need of revision. A commission of prominent Cubans had been appointed by the provisional governor in 1908 to revise the penal code and the law of criminal procedure. This commission did not finish its work before the intervention ended, and receiving little encouragement from the new Cuban congress, its efforts came to naught.

THE RELATIONS OF THE UNITED STATES AND PERU WITH RESPECT TO CLAIMS, 1822-1870

INTRODUCTION

This paper is a study of the claims relations of the United States and Peru from the date of their earliest contacts to February 27, 1870. It deals with claims of supposedly international importance, and especially with those claims which came before one or more of the mixed commissions or were provided for in the claims conventions arranged between the two countries.

The settlement of disputed claims throughout this early period of relations between the United States and Peru was provided for generally by means of claims conventions drawn up, signed, and duly ratified by the authorities of each of the two nations. For this reason it may be worth while to examine each of the four claims conventions separately and to see what decisions and awards were made in fulfilment of the terms of each of them.

That all of these conventions are illustrative of the principle of arbitration in the solution of international problems is at once evident. The preambles of two of the conventions, those of 1841 and 1862, admit that "differences" have arisen, and the preambles of all four of them, that is, those of 1841, 1862, 1863, and 1868, manifest the same general sentiment and purpose: that the two governments are "desirous of consolidating permanently the good understanding and friendship now happily existing between the parties",¹ or that they are

¹ Vide W. M. Malloy (ed.), *Treaties, Conventions, International Acts and Agreements between the United States of America and Other Powers, 1776-1909*, II. 1386 ff. for a text of the convention concluded March 17, 1841. For a text of the convention in Spanish, vide Ricardo Aranda, *Coleccion de los Tratados, Convenciones, Capitulaciones, Armisticios y otros Actos diplomáticos y políticos celebrados desde la Independencia hasta el Día precedida de una Introducción que comprende la Época colonial*, VII. 34 ff.

"equally animated with the desire to maintain the relations of harmony which have always existed, and which it is desirable to preserve and strengthen . . .",² and for these reasons "have agreed to make arrangements for that purpose by means of a convention".³

The purposes of all of them, then, were the same. Generally, they were for the promotion of harmony and goodwill between the signatory powers; more specifically, they aimed at the settlement of certain claims. Further than this there is little similarity between them, save in the actual form in which they were drawn up.

THE CLAIMS CONVENTION OF MARCH 17, 1841

The claims convention concluded on March 17, 1841, dealt exclusively with the claims of citizens of the United States against the Peruvian Government. By the terms of this convention Peru agreed, "in order to make full satisfaction for various claims of citizens of the United States",⁴ to pay to the United States Government \$300,000 "in hard dollars of the same standard and value and those now [then] coined at the mint in Lima";⁵ and in ten equal annual instalments of \$30,000 each,⁶ beginning January 1, 1844,⁷ with the remaining instalments due on each successive January 1 thereafter until paid. Moreover, interest at the rate of four per cent was to be paid on the \$300,000, to be computed from January 1, 1842; and such interest on each instalment was to be paid with the instalment.⁸

This indemnity was to be applied to claimants on account of seizures, captures, detentions, sequestrations, and confiscations of their vessels, or for the damage and destruction of them,

² From the Convention of December 20, 1862; *vide* Malloy, *op. cit.*, II. 1406 ff.; Aranda, *op. cit.*, VII. 406 ff.

³ From the Convention concluded January 12, 1863; *vide* Malloy, *op. cit.*, II. 1408 ff.; Aranda, *op. cit.*, VII. 412 ff.; H. La Fontaine, *Pasicrisie internationale Histoire documentaire des Arbitrages internationaux*, p. 43 ff.

⁴ Article I.

⁵ Article IV.

⁶ Article II.

⁷ Later amended to begin January 1, 1846.

⁸ Article III.

of their cargoes, or other property, at sea, and in the ports and territories of Peru, by order of said Government of Peru, or under its authority. . . .

A further limitation was placed upon the foregoing description of the claims to be included by Article V of the convention:

There shall not be demanded of the Government of Peru any other payment or indemnification, on account of any claim of the citizens of the United States, that was presented to it by Samuel Larned, esquire, when Chargé d'Affaires of the United States near Peru. . . .

All claims "subsequent to those presented by Mr. Larned" were to "be examined and acted upon hereafter".

In short, the indemnity applied to claims arising from seizures, confiscations, damages or losses of property at sea or in Peruvian territory, by order of, or under, the authority of the Peruvian Government, upon the fundamental condition that they had previously been presented by Mr. Larned.

By agreeing to pay the flat sum of \$300,000, the Peruvian Government relieved itself of all further responsibility in regard to the claims as described. It would not be party to any dispute arising either as to the justice of any particular claim or as to whether an act had been executed under its authority or by its orders. The treaty specifically stated that the indemnity was to

be distributed among claimants, in the manner and according to the rules that shall be prescribed by the Government of the United States.⁹

Steps had been taken by the United States representative at Lima as early as February 19, 1840, to settle these claims, amounting nominally, with interest,¹⁰ to \$1,200,000. Mr. James C. Pickett, the United States chargé d'affaires, of-

⁹ Article I.

¹⁰ Interest constituted about one-half of this amount.

ferred first to settle for \$400,000 bearing interest at the rate of six per cent, to be paid in eight annual instalments.¹¹ Not until the principal was reduced to one-third of the nominal value of the claims, however, did the Peruvian Government sign the convention.

Circumstances both in the United States and Peru prevented the exchange of ratifications by March 17, 1843, as provided for in the seventh article of the convention. In spite of the fact that the president of the United States submitted the convention to the senate for ratification on January 10, 1842,¹² it was not approved until January 5, 1843, rendering it impracticable that it should reach Lima by March 19. The senate therefore extended the time for the exchange of ratifications until December 20, 1843.¹³

Meanwhile, ratification in Peru had likewise been delayed. Though General Menéndez, the constitutional president, had agreed to the treaty prior to March 17, 1843, the Peruvian National Congress did not convene until 1845, making ratification within the stipulated time impossible. On July 16, 1843, General Vivanco, who had placed himself at the head of the government by means of a revolution, ratified the convention without submitting it to the national congress as the constitution of the country required. Ratifications with the United States were thus exchanged for the first time on July 22, 1843. But with the deposition of Vivanco, the existing government declared null and void his administrative acts, and in this light did it regard the ratification of the convention. Final ratification, satisfactory to the Peruvian Government, was secured when the United States accepted a modi-

¹¹ Pickett to Ferreyros, Despatches from Peru, V.; John Bassett Moore, *History and Digest of the International Arbitrations to which the United States has been a Party* . . . , V.

¹² President Tyler to the Senate, January 10, 1842, James D. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1897*, IV. 91.

¹³ President Polk to the Senate, May 26, 1846, *ibid.*, IV. 444. Tyler's fourth annual message of December 3, 1844, called the attention of the senate to this (*ibid.*, IV. 340).

fication¹⁴ of the original instrument proposed by the Peruvian Congress October 21, 1845, to the effect that the first installment "should begin from the first day of January, 1846".¹⁵ The convention was proclaimed January 18, 1847.¹⁶

Conformable to that provision of the convention which allowed the United States Government to distribute the indemnity among the claimants in the manner that it desired, congress passed an act (August 8, 1846) making it the duty of the attorney general of the United States to adjudicate the claims.¹⁷ Attorney General Clifford made his final report of adjudications to the department of state on August 7, 1847.¹⁸

Twenty-six claims amounting to \$421,432.41, all having to do with the treatment accorded fourteen different vessels, their crews and their cargoes, during Peru's struggle for independence, were allowed.¹⁹ Seven other claims embracing an amount of \$76,094.25 were disallowed on the grounds that they were not embraced within the terms of the convention.²⁰ The

¹⁴ Secretary of State Buchanan accepted this modification after consultation with some of the principal claimants (Moore, *op. cit.*, V. 4592; Buchanan to Jewett, June 1, 1846, Instructions to Ministers, Peru, XV. 48-49).

¹⁵ Polk to the Senate, May 26, 1846, Richardson, *op. cit.*, IV. 444-445. *Vide* Moore, *op. cit.*, V. 4592.

¹⁶ Malloy, *op. cit.*, II. 1386.

¹⁷ 9 Statutes at Large 80. Though there had been some discussion on the point in the house, it was finally provided that the attorney general should be allowed \$2,000 for his services, and \$1,000 for those of a clerk; and all expenses contingent upon the work of adjudication should be paid out of the indemnity fund (*vide* XIV. 68; XV. 209, 213, 217, 312, 1204). Though Attorney General J. Y. Mason began this work, it was completed by Attorney General Nathan Clifford.

¹⁸ Department of State, Record of the Proceedings of the Attorney General in the Matter of the Peruvian Indemnity under the Act . . . approved 8th August 1846, p. 75 ff.; Moore, *op. cit.*, V. 4603 ff.

¹⁹ A text of the final reports is given in Moore, *op. cit.*, V. 4603 ff. Detentions, confiscations, seizures, captures and destruction, injuries and damages to ships and their cargoes, money extorted or sequestered, articles stolen: these are the specific reasons listed for making the awards.

²⁰ Evidence submitted in some of the cases showed that the injuries sustained and damages done were inflicted by the Spaniards.

attorney general allowed nothing but the principal in any of the cases as it appeared to him that

The charge for interest is [was] . . . incompatible with the principles which appear to have been adopted by the two governments in concluding the convention.²¹

On this point it is difficult to follow Mr. Clifford's reasoning. The truth seems to be that he was facing the hard fact that only \$300,000 had been placed at his disposal with which to satisfy claims amounting, according to his own later estimate, to \$421,432.41; consequently, he was forced to deny charges for interest on claims some of which were twenty years old.²²

What actually happened by the time Peru made the final payment of the indemnity fund on February 15, 1855, was this: The attorney general had deducted \$3,000 for his services and those of his clerk,²³ and the interest on the annual instalments had increased the principal of \$300,000 to an aggregate of \$397,028.62. Of this sum there were paid to more than forty individuals representing the original claimants during the fiscal years 1848 to 1867, inclusive, amounts totaling \$394,989.83; and the balance of \$2,038.79 was carried to the surplus fund of the treasury on June 30, 1877.²⁴ Such was the amount received for claims amounting nominally with interest to \$1,200,000.²⁵

A detailed study of these claims, having their origin during Peru's epochal struggle for independence, is likely to lead to the conclusion that the Peruvian authorities, being sorely pressed on more than one occasion, were often forced to interfere, usually on some legal pretext, with the vessels and cargoes of a friendly nation in order to carry on their fight for

²¹ *Ibid.*, V. 4595.

²² Department of State, Peru Claims, 1841, Envelope I, folders I and VI; Moore, *op. cit.*, V. 4599.

²³ By the act of August 4, 1864 (9 *Statutes at Large* 80).

²⁴ Assistant Secretary of the Treasury S. Lowman to the writer, March 17, 1932, a letter now in possession of the writer.

²⁵ Pickett to Ferreyros, February 19, 1840, Despatches from Peru, V.; Moore, *op. cit.*, V. 4591.

freedom. If the evidence laid before the attorney general is to be accepted and if the statement in Article I of the claims convention of March, 1841, is to be regarded as an admission that some such acts were executed under the authority of the Peruvian Government, the foregoing conclusion can not be avoided.

A few specific instances will demonstrate clearly something of the treatment accorded by the Peruvians to vessels of the United States. Captain Lombard and his ship *Minerva* were pressed into the service of Peru in the fall of 1824 and were forced to transport Peruvian troops from Guayaquil to Peru; both he and his ship were abused.²⁶ The bark *Peru* was likewise detained and sequestered for the transportation of soldiers.²⁷ Money was forcibly taken from the *Providence* and the *Friendship* and was never returned. Admiral Guise of the Peruvian Navy seized and appropriated the schooner *Robinson Crusoe* with the cargo thereof; it was destroyed while in his possession, no legal adjudication having taken place. From the vessel *Henry*, two brass cannons together with their carriages, among other things, were taken. The ship *Esther*, for reasons deemed insufficient by the attorney general of the United States, was condemned by a Peruvian court and fitted out as a war vessel.²⁸

It is not to be supposed, however, that the Spanish authorities had been altogether idle in the meantime. The *China*, detained in the early months of 1824 by Peruvian authorities,²⁹ was condemned by Spanish officers soon afterward for

²⁶ Tudor to the Peruvian minister of marine, February 25, 1825, Consular Letters, Lima, I; House of Representatives, 24 Congress, 2 Session, Executive Document, No. 167, p. 53. This case was dropped by the injured parties and never came up for settlement.

²⁷ In connection with these vessels, I refer once and for all to Department of State, Peru Claims, 1841; Moore, *op. cit.*, V. 4594-4602.

²⁸ This vessel later came into the possession of the Spaniards (Tudor to J. Q. Adams, August 24, 1824, House of Representatives, 24 Congress, 2 Session, Executive Document, No. 167, p. 28).

²⁹ A claim was awarded for this detention.

smuggling;³⁰ the *Nancy* and the *General Carrington* suffered a like fate.³¹ Much of the trouble could possibly have been avoided had the United States Government followed the suggestions of its representative in Lima and sent to the Peruvian Coast a naval force of sufficient size to protect such of our vessels as were engaged in lawful commerce.³²

The claims convention of March, 1841, as amended, provided for the payment of the first annual instalment (together with the interest thereon at the rate of four per cent from January 1, 1842), on January 1, 1846, and of the subsequent instalments on each successive January 1 thereafter until paid.

Almost from the beginning, however, some difficulty was experienced regarding the payments. At the time for the payment of the first instalment, the principal of \$30,000 only was paid;³³ and the Peruvian Government requested that this first instalment be considered as falling due on January 1, 1847, rather than on January 1, 1846, as laid down in the convention. But the United States held firmly to the express terms of the convention and considered it binding upon both parties from the date of its signature.³⁴ Thinking perhaps that such a measure might lighten in some degree the burden, the president of the United States arranged that all further payments should be made to our navy agents at Lima, Edward McCall & Company, and should be expended there in purchasing supplies for the navy. When a payment was so made,

³⁰ Tudor to Adams, November 11, 1824, Consular Letters, Lima, I; House of Representatives, 24 Congress, 2 Session, Executive Document, No. 167, p. 38; William R. Manning (ed.), *Diplomatic Correspondence of the United States concerning the Independence of the Latin American Republics*, III. 1772-1773.

³¹ Tudor to Adams, June 7, July 11, August 24, October 17, 1824, Consular Letters, Lima, I; House of Representatives, 24 Congress, 2 Session, Executive Document, No. 167, pp. 10-37, *passim*. The letter of August 24, 1824, is reprinted in Manning, *op. cit.*, III. 1758 ff., as is the one of October 17 (p. 1768 ff.).

³² *Ibid.*

³³ To Albert H. Jewett, the United States chargé d'affaires at Lima.

³⁴ Instructions to Ministers, Peru, XV. 56-57; Moore, *op. cit.*, VI. 4592.

the secretary of the navy was to pay over the same amount to the treasury of the United States to be at the disposal of the claimants to whom the indemnity belonged.³⁵

Until the final settlement of the matter on February 15, 1855,³⁶ delayed payments continued to be the rule. Although Mr. J. Randolph Clay, the United States chargé d'affaires at Lima, was convinced that the Peruvian Government possessed insufficient funds with which to meet the payments,³⁷ the United States showed a distinct inclination to press payment through diplomatic correspondence and remonstrance and to instruct the young state as to the true intent and meaning of its international obligations.

Mr. Clay was instructed on September 18, 1847, soon after his arrival in Lima, to urge the payment of the second instalment as it was then long over due.³⁸ From that time on, especially until May, 1850, when a noticeable improvement in the credit and finances of the government was apparent,³⁹ much of Mr. Clay's time and correspondence were taken up in protesting to the Peruvian Government.

In the face of this situation, Uncle Shylock sought for ounces where pounds were not forthcoming. The sum of \$5,000 on the weekly payment plan was accepted for a while;⁴⁰ then payments fell to sums as low as \$2,000,⁴¹ and

³⁵ Secretary of State Buchanan to Edward McCall & Company, March 24, 1847, United States Senate, 31 Congress, 1 Session, Executive Document, No. 58, p. 3.

³⁶ Clay to Marcy, February 21, 1855, Despatches from Peru, XI.

³⁷ Clay to Buchanan, May 12, 1848, United States Senate, 31 Congress, 1 Session, Executive Document, No. 58, p. 15, 18; Pardo to Clay, June 30, 1848, *ibid.*, p. 18. Señor Pardo told Mr. Clay that the Peruvian president had received no pay for the preceding quarter and that he, Pardo, minister of foreign affairs, had received only \$180 for his three months' services although an annual salary of \$7,000 was due him. (Clay to Buchanan, September 12, 1848, *ibid.*, p. 19).

³⁸ Buchanan to Clay, September 18, 1847, Instructions to Ministers, Peru, XV. 56-57; United States Senate, 31 Congress, 1 Session, Executive Document, No. 58, pp. 4-5.

³⁹ Clay to Clayton, May 11, 1850, *ibid.*, pp. 39-40.

⁴⁰ Clay to Buchanan, May 12, 1848, *ibid.*, p. 15.

⁴¹ Clay to Buchanan, July 12, 1848, *ibid.*, p. 18.

at times not even this small amount was received. Only once did he threaten, even mildly. A proposition was made to the government of Peru that it use the proceeds of guano sales of the Chincha Islands in the United States to discharge its obligations to the citizens of this nation.⁴² But owing to the fact that the Peruvian Government had granted to some British contractors the exclusive right to export guano to foreign markets from the Chincha Islands for a period of eighteen months, beginning June 18, 1848, in return for a much-needed loan of \$850,000, nothing came of this proposal.⁴³ Mr. Clay was directed on March 11, 1850, to inform the Peruvian minister of foreign affairs that:

The preference shown by that Government in providing for its debt to the British bondholders is accordingly viewed as a just ground of complaint by the American claimants . . . if this partiality shall be persevered in, and if all arrearages due . . . are not promptly paid, the President will deem it his duty to take into consideration the expediency of adopting other means than remonstrance for the purpose of obtaining justice.⁴⁴

At the time Secretary Clayton wrote this despatch, he was aware that the Peruvian Government had been forced for reasons of self-preservation to negotiate some such loan. Plans had already been formulated to overthrow the government should the army officers fail to receive their salaries.⁴⁵

THE CLAIMS CONVENTION OF DECEMBER 20, 1862, RESPECTING THE *Georgiana* AND THE *Lizzie Thompson*

The claims convention of December 20, 1862, was not like the other conventions under consideration, except in regard to the form in which it was drawn up. It was much more nar-

⁴² Clayton to Clay, June 16, 1849, *ibid.*, p. 5; Instructions to Ministers, Peru, XV. 65.

⁴³ Clay to Buchanan, January 11, 1848, United States Senate, 31 Congress, 1 Session, Executive Document No. 58, pp. 6-7.

⁴⁴ Clayton to Clay, Instructions to Ministers, Peru, XV. 68; United States Senate, 31 Congress, 1 Session, Executive Document, No. 58, p. 6.

⁴⁵ *Ibid.*, pp. 6-7.

rowly restrictive in the claims it embraced, being confined to the two concerning the ships *Georgiana* and *Lizzie Thompson*; and instead of naming a mixed commission to adjust the claims, it named one man, the king of the Belgians, to act as umpire and arbiter.

The seizure and confiscation of these two United States vessels gave rise to the most heated and prolonged diplomatic correspondence that had thus far been carried on between this country and Peru, resulting finally in the rupture of diplomatic relations. A short account of the internal conditions of Peru that led to the seizure will therefore not be inappropriate.

On the last day of October, 1856, a group of insurgents in Arequipa took possession of the city and declared General Vivanco president. Though the insurrection met with little or no success on land, it was strengthened considerably by the revolt of the entire fleet, consisting of the frigate *Apurimac* and the small steamers, *Loa* and *Tumbes*. The insurgents captured Islay, the seaport of Arequipa, and in December, General Vivanco arrived from Chile where he had been up to that time. His first important move was to possess himself of the Chincha Islands, where there were valuable guano deposits. He then in turn took possession of Trujillo, San Pedro, Lambayeque, and Piura, but failed to take Callao, although General Castilla commanding the government forces, was seven hundred miles away to the north.

The *Tumbes* and the *Loa* returned to the support of the government in May, 1857; but the *Apurimac*, commanded by General Rivas, remained with the insurgents and proceeded from one southern port to another not in possession of government forces. In whatever port he happened to be, Rivas acted as administrator and collector of customs, finally establishing himself at Iquique.

The insurrection ended when General Castilla captured Arequipa on March 7, 1858, and allowed General Vivanco to

escape in disguise.⁴⁶ It is in the light of these facts that the claims controversy regarding the *Georgiana* and the *Lizzie Thompson* can best be understood.⁴⁷

These two vessels belonging to citizens of the United States were seized by the Peruvian steamer *Tumbes* on January 24, 1858. The *Georgiana* was seized at Punta de Lobos, while the *Lizzie Thompson* was taken at Pabellon de Pica.⁴⁸

It appears that the two vessels, coming from different ports in the regular course of business with regular cargoes, went to Iquique. There being relieved of their cargoes, they sought further business. The *Georgiana* was thereupon chartered by Laquellec & Bordes of Valpariso, J. Santa Ossa acting in behalf of that firm at Iquique, "to take on board a load of guano" at Punta de Lobos. Likewise, the *Lizzie Thompson* was chartered to Frederick Freraut, merchant, residing in Iquique, as French consul, to proceed to Pabellón de Pica to load with guano. The vessels apparently fulfilled all

⁴⁶ A short account of this revolution is to be found in Moore, *op. cit.*, II. 1593 ff.

⁴⁷ The diplomatic correspondence relating to the seizure and confiscation of these two vessels, in addition to being found in manuscript form, has been published. The most complete edition is that published at Brussels (1864) in French under the title of *Correspondance diplomatique entre les Etats-Unis et le Peru au Sujet de la Saisie et de la Confiscation des Navires Americains la Lizzie Thompson et la Georgiana* . . . , hereafter cited as *Correspondance Diplomatique*. Another edition, though less complete than the above, was published at Lima in 1861 (containing both English and Spanish translations of the correspondence) entitled *Question between the United States and Peru in consequence of the Seizure and Confiscation of the two American Vessels Lizzie Thompson and Georgiana*, hereafter cited as *Diplomatic Correspondence*. Moore, *op. cit.*, II. 1593 ff. also gives the pertinent facts of the case.

⁴⁸ The day preceding the seizure of the *Georgiana* and the *Lizzie Thompson*, January 23, the *Dorcas C. Yeaton*, belonging to a United States citizen was made to "heave to" by the *Tumbes*, while sailing on the high seas in the neighborhood of the guano islands; and was taken into Callao under suspicion. But though some diplomatic correspondence was exchanged on the subject, claims of damage were removed when the captain of the *Tumbes* paid the injured party the sum of \$9,600. *Vide* Osma to Cass, March 27, 1858, Notes from Peruvian Legation, II; *Correspondance Diplomatique*, p. 134 ff.; *Diplomatic Correspondence*, p. 43 ff.; Moore, *op. cit.*, II. 1597 ff. Cass to Osma, May 22, 1858, Notes to Peru, I. 159 ff.; *Correspondance Diplomatique*, p. 158 ff.; *Diplomatic Correspondence*, p. 56 ff.; Moore, *op. cit.*, II. 1603.

port regulations upon entering and leaving Iquique and cleared at the customs-house after having received licenses for that purpose. But during the period of these negotiations, General Rivas of the Vivanco party was in charge of the port of Iquique, and it was with him that the dealings were held.⁴⁹

After having been seized while in the act of loading guano, the two United States vessels were carried to Callao where they arrived on January 29; and there they, together with their masters, were held for trial before the judge of contraband and confiscations. It appears that eighteen members of the *Lizzie Thompson's* crew were set adrift in two small boats on January 24, having neither water nor provisions. The masters of the vessels and the mate of the *Georgiana* were imprisoned in Las Casas Matas at Callao from the day of their arrival in Callao until February 3, at which time they were liberated on bail. At the time of the seizure of the two United States vessels, three Chilean vessels were likewise seized while loading guano at Pabellón de Pica and Punta de Lobos, and they also were taken to Callao along with the *Georgiana* and the *Lizzie Thompson*.⁵⁰

An immediate protest in behalf of the two United States vessels was made to which the Peruvian minister of foreign affairs replied on February 3. Mr. Clay, he wrote,

ought to know that the arrest and imprisonment of the said persons, [the] capture and confiscations of their vessels had been caused for having been found . . . employed in the criminal and scandalous contraband of Huano infringing the fiscal laws, the regulations of commerce and the coasting ordinances which severely forbids foreign vessels not only that illicit trade but even to go to ports, anchoring places and near the Huano deposits, without a special license from the government, under the penalties therein designed; penalties which, be-

⁴⁹ Clay to Cass, February 12, 1858, Despatches from Peru, XIV; *Correspondance Diplomatique*, p. 1 ff.; *Diplomatic Correspondence*, p. 3 ff.; Moore, *op. cit.*, II. 1595.

⁵⁰ Clay to Cass, January 11, 1858, Despatches from Peru, XIV; Moore, *op. cit.*, II. 1595.

sides the civil part also are extended to corporal penalties against those that perpetrate such crimes.⁵¹

The reply of Mr. Clay, dated February 9, held that the only valid ground of seizure under the revenue laws was jurisdiction, and that jurisdiction was imperfect without actual possession of the places where the seizure was made. A revolution, as he pointed out, had disturbed the peace of the country for nearly two years during which time the party in opposition to the existing government had

appropriated to itself the tangible and available property of the nation, as a means of raising money to carry on the war, has [had] assued [*sic*] "vales", or bonds; pledging the property and resources of the nation for their payment; seized upon the public money, in deposit in the Custom Houses . . . there have been alternately, clearances of merchandise by the Government and by the Revolution at the Custom Houses . . .

depending upon which of the two parties was in possession at the time. He insisted that the opposition was a party engaged in a civil war and as belligerents was entitled to

jurisdiction over the territory in its possession and as emanating from that possession and jurisdiction the right of changing the local authorities and performing other official acts.

The bearing of this argument is clear. From Mr. Clay's point of view the masters of the vessels in question as foreigners and neutrals had no right to question the authority and acts of the local government in charge of Iquique.⁵²

Upon the condemnation of the vessels by the Peruvian courts in May, 1858, and a decision based upon apparently sound information that it would be useless to appeal the case to the supreme court,⁵³ Mr. Clay submitted to the Peruvian

⁵¹ Zevallos to Clay, Despatches from Peru, XIV; *Correspondance Diplomatique*, p. 22 ff.; *Diplomatic Correspondence*, p. 1 ff.

⁵² Clay to Zevallos, Despatches from Peru, XIV; *Correspondance Diplomatique*, p. 25 ff.; *Diplomatic Correspondence*, p. 11 ff.; *vide also* Moore, *op. cit.*, II. 1595-1596.

⁵³ Clay to Cass, May 26, 1858, Despatches from Peru, XIV; *Correspondance Diplomatique*, p. 178 ff.; Moore, *op. cit.*, II. 1597.

Government on July 6 claims for the vessels amounting to \$155,714.65.⁵⁴ Of this amount, \$109,363.82 was for the *Lizzie Thompson* and \$46,350.83 for the *Georgiana*. The vessels were later sold at public auction on the order of the judge of confiscations.⁵⁵

Meanwhile, Señor Juan I. de Osma, Peruvian minister in Washington, began a correspondence there with Secretary Cass on March 27, 1858. He made what was, from his point of view, a full explanation as to why his government had seized and confiscated the vessels. The guano deposits at Punta de Lobos and Pabellón de Pica were the public property of Peru. The Peruvian Government had in 1852 published a set of commercial regulations declaring that "the vessels that take in guano for foreign ports shall be allowed to do so in the Chincha Islands only"; that "the exportation of guano shall be carried on only by vessels under contract with the government or its agent"; that

vessels that may be found at anchor on the coasts of the Islands belonging to the republic shall be confiscated, and moreover, that, if huano will have been found aboard, the captains and crews [will] be handed over to the action of customary justice to be tried as delinquents in cases of theft.

He pointed out further that the Peruvian National Convention made a decree and published it in the official organ of the government on April 2, 1857, to wit:

That all huano exported, and thereafter to be exported from the Chincha Islands, or from any other deposit of Peru, by disturbers of the public order, or by virtue of contracts made with them, or with their agents, shall at all times be subject to be claimed back as stolen national property, and the parties responsible therefore [*sic*] shall be civilly and criminally prosecuted in conformity with law.

⁵⁴ Clay to Zevallos, Despatches from Peru, XV; *Correspondance Diplomatique*, p. 203 ff.; *Diplomatic Correspondence*, p. 92 ff.; Moore, *op. cit.*, II. 1597. There is a slight variation as to the exact amount claimed for the vessels.

⁵⁵ Clay to Cass, November 11, 1858, Despatches from Peru, XV; *Correspondance Diplomatique*, p. 258; Moore, *op. cit.*, II. 1597.

Thus were explained the laws which the vessels and their crews had violated. Mr. Osma then went on to say that the United States had first

to recognize the state of civil war in Peru, and declare their neutrality therein, before their citizens can [could] avail themselves in Peruvian territory of the rights of neutrals in a belligerent country.⁵⁶

Secretary Cass on May 22, 1858, after observing with reference to the correspondence between Mr. Clay and Señor Zevallos in Lima that

there are [had been] some indications of excited feelings on both sides, and some [sic] expressions indulged [in] that had better been avoided,

defended the position of the United States on pretty much the same ground that Mr. Clay had held. The condition in Peru at the time, he contended,

conferred upon *de facto* rulers the right to govern such portions of the country as they were able to reduce to their possession. It is [was] the duty of foreigners to avoid all interference under such circumstances, and to submit to the power which exercises [exercised] jurisdiction over the places where they resort [resorted], and while thus acting they have [had] a right to claim protection, and also to be exempted from all vexatious interruption when the ascendancy of the parties is [was] changed by the events of the contest.⁵⁷

It is not within the scope of this study to enter into a full discussion of the points advanced by each of the contending parties and the question of international law involved. It will suffice to observe that the two governments were clearly at odds: the United States demanded payment of claims which the Peruvian authorities refused to pay or of which to acknowledge the rectitude. When Secretary Cass ventured to enclose an opinion of the United States attorney general, Mr.

⁵⁶ Osma to Cass, Notes from Peruvian Legation, II; *Correspondance Diplomatique*, p. 134 ff.; *Diplomatic Correspondence*, p. 49 ff.; Moore, *op. cit.*, II. 1597 ff.

⁵⁷ Cass to Osma, Notes to Peru, I. 159 ff.; *Correspondance Diplomatique*, p. 158 ff.; *Diplomatic Correspondence*, p. 60 ff.; *vide also* Moore, *op. cit.*, II. 1599 ff.

Black, favorable to the cause of the vessels in a letter to Mr. Osma,⁵⁸ the last named gentleman hastened in return to forward an opinion of Mr. Reverdy Johnson equally favorable to the Peruvian side of the controversy.⁵⁹

As a result of constant diplomatic pressure, the Peruvian Government finally expressed its willingness to arbitrate this question along with that of the other claims, but the Washington Government declined to accept this proposal on the ground that a majority interest of the vessels' owners was unwilling.⁶⁰

Acting expressly upon instructions from Washington, Mr. Clay, on June 5, 1860, demanded of the Peruvian Government that it acknowledge its responsibility for the seizure and confiscation of the vessels; and that it enter into a convention for a joint commission to adjust the amount of the indemnity to be paid, which commission was to adjudicate all other claims of citizens of either country against the government of the other.⁶¹ Should a satisfactory answer not be returned within five days, Mr. Clay was to demand his passports and diplomatic relations were to be discontinued.⁶²

Just at this juncture, however, a sudden change took place in the Peruvian ministry of foreign affairs, Dr. Miguel del Carpio being replaced by Señor José Fabio Melgar. Hence Mr. Clay felt it necessary to forego the demand for a five-day

⁵⁸ Black to Cass, May 15, 1858, enclosed with Cass to Osma, May 22, 1858, Notes to Peru, I. 159 ff.; *Correspondance Diplomatique*, p. 173 ff.; *Diplomatic Correspondence*, p. 65 ff.; Moore, *op. cit.*, II. 1602 ff.

⁵⁹ Johnson to Osma, February 24, 1858, enclosed with Osma to Cass, August 4, 1858, Notes from Peruvian Legation, II; *Correspondance Diplomatique*, p. 214 ff.; *Diplomatic Correspondence*, p. 68 ff.; Moore, *op. cit.*, II. 1606.

⁶⁰ Cass to Clay, March 2, 1859, Instructions to Ministers, Peru, XV. 257; Moore, *op. cit.*, II. 1608.

⁶¹ Clay to Carpio, enclosed with Clay to Cass, June 13, 1860, Despatches from Peru, XVII; *Correspondance Diplomatique*, p. 467 ff.; *Diplomatic Correspondence*, p. 103 ff.; Moore, *op. cit.*, II. 1609 ff.

⁶² Cass to Clay, April 25, 1860, Instructions to Ministers, Peru, XV. 273 ff.; *Correspondance Diplomatique*, p. 462 ff.; Moore, *op. cit.*, II. 1609 ff. Clay received this communication on May 31.

acceptance of his propositions.⁶³ This action of the chargé d'affaires was approved in Washington on July 19, but Mr. Clay was directed to execute his instructions regarding the demand for his passports immediately upon receipt of this approval if the proposals of the United States remained unaccepted.⁶⁴

It appears from the foregoing communication of July 19 that Mr. Clay had requested the commander of the Pacific squadron to send a war vessel to Callao to aid him in collecting the claims. In reply to this request he was informed by the state department that

the President has [had] repeatedly applied to Congress for a general authority to use the naval forces of the United States for the purpose of enforcing by hostile measures the payment of the just claims of our citizens against foreign governments, but the authority has [had] always been refused, and consequently neither the officer in command nor yourself would be warranted in employing any vessel . . . for such a purpose. . . . Should the claims not be satisfactorily adjusted, the whole subject will be submitted to Congress at the commencement of the next session.

Conferences were held between President Castilla and Mr. Clay on July 23 and again on September 28, at the latter of which Mr. Clay stated the final proposition of his government, referring to this final proposition as a substitute for the two proposals of June 5. Actually there was little difference between them. This last strongly pressed proposal was that the Government of Peru should agree to deliver to the United States a gross sum, as a liquidation in full of all the reclamations of citizens of the United States pending at present before it. The amount of the said sum to be determined upon and fixed by a mixed Commission. . . .⁶⁵

⁶³ Melgar to Clay, September 28, 1860, enclosed with Clay to Cass, September 29, 1860, Despatches from Peru, XVII; *Correspondance Diplomatique*, p. 496 ff.; *Diplomatic Correspondence*, p. 103 ff.

⁶⁴ Trescott to Clay, Instructions to Ministers, Peru, XV. 282 ff.; *Correspondance Diplomatique*, p. 482 ff.; Moore, *op. cit.*, II. 1609.

⁶⁵ Clay to Melgar, October 2, 1860, enclosed with Clay to Cass, October 4, 1860, Despatches from Peru, XVII; *Diplomatic Correspondence*, p. 107 ff.; *Correspondance Diplomatique*, p. 507 ff.

In reply to this, the Peruvian Government reiterated its willingness

to submit to a mixed commission all standing claims to this very day of the citizens of north America against Peru and those of Peruvian citizens against the United States.⁶⁶

Allied with the firm intention of the Peruvian executive to stand by the laws of the country and the decisions of its tribunals, a thoroughly conciliatory and friendly spirit was manifest in all of its acts and correspondence. The Buchanan administration in Washington was equally determined to stand by its demand for redress.

In short, the differences of the two governments as reflected in the position assumed by each on September 28 were these: Peru desired that a mixed commission decide, first, if it was to pay any indemnity at all, and if so, how much. The United States demanded, first, a promise that Peru would pay something, leaving it to the mixed commission to decide the exact amount. Peru would leave both the question of its liability and the extent of that liability to the commission; whereas the United States would have Peru admit its liability at the outset and leave it to the commission to determine the exact amount thereof.

On October 2, Mr. Clay in a note repeated the offer made in conference with the Peruvian president on September 28, demanding a "categorical reply" thereto by Saturday, October 6 at six o'clock. "Should none of these propositions be accepted by that time", Mr. Clay informed Señor Melgar, he, Clay, would "find himself compelled to demand his passports and to suspend the Diplomatic relations between the two Republics".⁶⁷

A note from the Peruvian minister declining to accept Mr. Clay's proposals reached the latter during the afternoon of

⁶⁶ Melgar to Clay, September 28, 1860, enclosed with Clay to Cass, September 29, 1860, Despatches from Peru, XVII, *Correspondance Diplomatique*, p. 496 ff.; *Diplomatic Correspondence*, p. 104 ff.

⁶⁷ See footnote 65, *supra*.

October 6, and on October 9 he demanded his passports,⁶⁸ receiving them most probably on October 18.⁶⁹ But withal and despite the fact that Señor Melgar was notified on October 19 "that the Diplomatic Relations between the two Republics are [were] from this day closed", Mr. Clay continued by further correspondence to debate the matter. Not without some degree of justice did the secretary of state subsequently disapprove of Mr. Clay's actions in this regard, for Clay had palpably weakened at the last moment in addition to having disobeyed his instructions.⁷⁰ Not until the Lincoln administration were the diplomatic relations between the two republics resumed.

On December 20, 1862, a claims convention was signed by Peru and the United States naming the king of the Belgians umpire and friendly arbitrator . . . to decide and determine all questions, both of law and fact, involved in the proceedings of the Government of Peru in the capture and confiscation of the ships *Lizzie Thompson* and *Georgiana*.⁷¹

Ratifications were duly exchanged on April 21, 1863. The king of the Belgians, however, after examining the materials on the controversy that had been published, declined to act, on the grounds that the arbitration would be of "a very delicate nature by reason of the special circumstances" of the case. This news was relayed to the American secretary of state, Mr. Seward, in a communication from the United States minister at Brussels dated January 14, 1864.⁷² A con-

⁶⁸ Clay to Melgar, October 9, 1860, enclosed with Clay to Cass, October 10, 1860, Despatches from Peru, XVII; *Correspondance Diplomatique*, p. 511 ff.; *Diplomatic Correspondence*, p. 111 ff.; Moore, *op. cit.*, II. 1610.

⁶⁹ Clay to Melgar, October 19, 1860, Despatches from Peru, XVII; *Correspondance Diplomatique*, p. 534 ff.

⁷⁰ Cass to Clay, November 10, 1860, Instructions to Ministers, Peru, XV. 284 ff.; Moore, *op. cit.*, II. 1610.

⁷¹ Malloy, *op. cit.*, II. 1406 ff.; Aranda, *op. cit.*, VII. 406 ff. Thus did Lincoln clearly repudiate the policy of the preceding administration.

⁷² Henry S. Sanford to Seward, January 14, 1864, cited by Moore, *op. cit.*, II. 1611-1612.

fidential despatch to Mr. Seward bearing the date of January 29 more fully amplified the attitude of the Belgian monarch:

I have to report that His Majesty referred to his having declined the arbitration of our question with Chile, [*sic*: Peru] touching the seizure of the "Georgiana" and the "Lizzie Thompson" on account of the delicate circumstances which were connected with the case, and his want of sufficient data as to the local legislation of the two countries to enable him to come to a correct conclusion. He added that he had looked into the case, and he must say that he did not think we had the strongest side of it; indeed he would have been constrained, had he accepted the position of arbiter, to decide against us, and that his desire not to make a decision unfavorable to us had been a motive for declining to accept the trust which had been, in so flattering a manner, offered to him.⁷³

Basing its action upon the refusal of the arbiter to act and the reasons given for such refusal, the Lincoln administration abandoned the claims and notified the Peruvian minister at Washington on July 9, 1864,

that there is [was] no intention . . . to refer the subject to the arbitrament of any other power, or to pursue the subject further.⁷⁴

THE CLAIMS CONVENTION OF JANUARY 12, 1863

The third claims convention between the two countries was concluded January 12, 1863, ratifications of which were exchanged April 18 of the same year. By the terms of this convention a mixed commission of four members, two of which were appointed by each of the two governments, was to adjudicate all claims of "citizens" of one country against the government of the other, claims

which have [had] not been embraced in conventional or diplomatic agreement between the two governments or their Plenipotentiaries, and statements of which, soliciting the interposition of either Government, may, previously to the exchange of the ratifications of this con-

⁷³ *Ibid.*, II. 1612.

⁷⁴ Seward to Barreda, July 9, 1864, cited by Moore, *op. cit.*, II. 1612.

vention, have been filed in the Department of State at Washington, or the Department of Foreign Affairs at Lima. . . .⁷⁵

The commissioners, immediately after their organization and before further procedure, were to name a fifth person "to act as an arbitrator or umpire in any case or cases in which they themselves differ [ed] in opinion". They were to meet in Lima within three months after the exchange of the ratifications of this convention, and after taking an oath before the supreme court, they were to proceed to business. It was also further provided that they should hear "one person in behalf of each Government on each separate claim" if requested to do so; that the decision of three of them should "give full force and effect to their decisions";⁷⁶ and that such decision was final.

Awards made by the commissioners were to be paid by the specified government against which they were awarded within one month after that government had received the report of the commissioners; otherwise, interest at the rate of six per cent was to be paid during such time as the delay in payment continued.

The commissioners for the United States were E. George Squire of New York, and James S. Mackie of Ohio; those for Peru, Felipe Barriga Álvarez and Santiago Tárara. They agreed upon General Pedro Alcántara Herrán, a Colombian citizen then in Lima, as umpire. On July 27, 1863, the credentials of Don Juan Oviedo, agent of the Peruvian Government, and those of Henry G. de la Reintrie, solicitor for the United States, were found to be satisfactory as were those of the two secretaries of the commission, Don Domingo Rada for the Peruvian Government and J. H. Lyman for that of the United States. They adopted July 17, 1863, as the day of their organization and concluded their labors within the

⁷⁵ Malloy, *op. cit.*, II. 1408 ff.; Aranda, *op. cit.*, VII. 412 ff.; La Fontaine, *op. cit.*, p. 43 ff.

⁷⁶ Article VIII provided that in case of the disagreement of the commissioners, the decision of the umpire was to be final.

period of six months as provided for in the terms of the convention, dating the final report of their work November 27, 1863.⁷⁷

Four claims, totaling \$660,682.08⁷⁸ were presented against the United States, of which two only, to the amount of \$42,951.73,⁷⁹ were allowed. In the cases of José F. Lasarte⁸⁰ and the ship *Alleghanian*, the convention declared that it had no jurisdiction. On the night of October 28, 1862, this United States ship, loaded with a cargo of guano belonging to the Peruvian Government and lying at anchor in Chesapeake Bay, was boarded by a party of men belonging to the confederate navy. Having been set on fire it sank with its cargo. On the ground that this claim was one of the government of Peru and not of a "citizen" of that country, the commission declared that it had no jurisdiction in the matter.⁸¹

The claim of Esteban G. Montano for the loss of the Peruvian bark *Eliza* was one of the most important presented to the commission. It appears that this bark was stranded on the Tonquin Shoal in San Francisco Bay on January 15, 1851, as a result of the unskilfulness or carelessness of David B. Morgan who had been taken aboard as pilot. Morgan was, apparently, a member of an association of pilots that acted under the state laws of California; and against this asso-

⁷⁷ Department of State, Secretary's Journal: Proceedings of the Mixed Commission of the United States of America and the Republic of Peru, Assembled at Lima, on the Seventeenth Day of July, A.D. 1863 . . . ; Moore, *op. cit.*, II. 1616 ff.

⁷⁸ Department of State, Records of Opinions and Awards of Mixed Commission, United States and Peru, Organized, under Convention between the two Countries, July 17, 1863; a full account of these opinions and awards is to be found in Moore, *op. cit.*, II. 1620 ff.

⁷⁹ Including the principal of \$24,151.29 awarded Montano, "with interest at the rate of six *per centum per annum* from September 2, 1851 to November 2, 1863" (\$17,630.44) and also the sum of \$1,170 awarded Juan del Carmen Vergel. The first of these awards was made "in current money of the United States", the second "in the silver money of the United States or its equivalent".

⁸⁰ *Vide* Moore, *op. cit.*, III. 2390 ff.

⁸¹ The guano was recovered in a damaged condition and sold at Baltimore, the proceeds of \$25,962.40 being divided equally between the Peruvian Government and the salvors.

ciated body of pilots a district court of the United States for California, on July 24, 1851, rendered a judgment for \$24,151 in payment for the loss sustained by the owner of the *Eliza*;⁸² but the judgment was never executed because of "the judgment creditor refusing or neglecting to indemnify the marshall". When Mr. Osma, the Peruvian minister at Washington, solicited the help of the federal government in recovering the amount of the judgment of the state of California, Secretary of State Daniel Webster transmitted documents relative to the matter to the governor of California;⁸³ and upon the refusal of the legislature of that state to assume responsibility, the Peruvian Government preferred the claim as against the United States.⁸⁴ The attorney general of the United States, Mr. Cushing, in an opinion on May 27, 1855, held that no responsibility whatsoever was attached to the United States.⁸⁵ But the claim was referred to the commission and in view of the inability of the commissioners to come to a decision, it was referred to General Herrán as umpire who awarded the claimant the sum of the judgment he had been granted in the United States district court, namely, \$24,151.29, with interest that brought the sum up to \$41,781.73, "all payable in the current money of the United States" (*moneda corriente*).

Further trouble now arose owing to the fact that the nominal amount of Mr. Montano's award "in the current money of the United States" was worth only about \$15,000 in gold when that gentleman in July, 1864, presented himself at Washington for payment, claiming that he was entitled to gold. The question was left to the next claims commission to settle.⁸⁶

⁸² Osma to Webster, June 2, 1852, Communications from Agents of Peru, I.

⁸³ Webster to Osma, June 15, 1852, Notes to Peru, I. 42 ff.

⁸⁴ Marcy to Tirado, February 6, 1855, *ibid.*, I. 128 ff.

⁸⁵ A concise summary of the whole case will be found in Moore, *op. cit.*, II. 1630 ff.

⁸⁶ Moore, *op. cit.*, II. 1638. In view of Mr. Montano's protest, the senate committee on foreign relations reported a bill to pay him \$27,800 in gold, but it failed to pass.

Citizens of the United States presented nineteen claims against the Peruvian Government amounting to \$1,152,401.19.⁸⁷ Eleven of these and part of another were decided unfavorably, some simply being disallowed, while others were dismissed for want of proof and jurisdiction. The seven and part of the other that were allowed amounted to \$79,901.73,⁸⁸ nearly all of which had to do with losses in person and property on land or sea. Joseph S. Allen was awarded \$500 in "current money of Peru" for injuries done his ship, the *Maid of Orleans*, by an accidental shot from the fort at Callao in 1855. For the value of his goods stolen from the custom-house at Lambayequi while in custody of the authorities, William Barney was awarded in the current money of Peru \$1,536.85.

Of the claims presented by citizens of the United States, that of Dr. Charles Easton is probably the most interesting. This claim and those of Alsop & Company which were allowed by the umpire were the only claims arising out of the usual revolutionary disturbances in Peru that came before this commission. Dr. Easton was operating his mine in the province of Andahuaylas when, on the night of April 29, 1854, his place was attacked and heavily damaged by a group of revolutionists seeking to overthrow the existing constitutional government of Peru.

His mills were burned, immense stones were rolled into his mine, his house was robbed of its contents, and Dr. Easton himself, besides

⁸⁷ This figure does not include the amount of two claims listed in value as "indefinite".

⁸⁸ Of the awards made by this commission, one was "in the current money of the United States", three "in the current money of Peru", one "in the current money of Peru or its equivalent in the current money of the United States", one "in the silver money of the United States or its equivalent", two "in pesos fuertes", one "in current money", and one "in current money of the country". By way of relieving itself of further responsibility in the matter, the commission declared that it was "impossible to establish in the extraordinary condition of financial values in the United States and Peru any fixed rate of exchange", and refused "to establish any rule to govern the action of the two parties to the convention in this respect".

being beaten, received two gunshot wounds from which he suffered a long and dangerous illness. While he was thus incapacitated for business, his mine filled with water, the supports gave way, and the whole was reduced to ruins.

An extended diplomatic correspondence took place regarding the matter after which the Peruvian minister for foreign affairs was authorized to offer Dr. Easton \$5,000. This sum was refused as inadequate and the claim came before the commission now being discussed. It finally reached the umpire, General Herrán, who awarded Dr. Easton the principal of \$19,000 "in current money" with interest, bringing the total award to \$29,858.50. He had presented a claim for \$42,310.⁸⁹

This commission of 1863 dealt with twenty-three cases *in toto*, all but four of which were claims of citizens of the United States against the Peruvian Government. Of the nineteen claims presented against Peru, amounting to \$1,152,401.19 awards were made in seven and a fraction cases to the amount of \$79,901.73. Of the four cases presented by Peruvian citizens against the United States amounting to \$660,682.08, two were allowed totaling \$42,951.73.

THE CLAIMS CONVENTION OF DECEMBER 4, 1868

The commission provided for in the convention of January 12, 1863, concluded its work in Lima on November 27, of that year, but this date by no means terminated the claims relations of the United States and Peru. Claims on the part of United States citizens against Peru continued to arise as a result of the disturbed domestic situation in Peru, aggravated in time perhaps by foreign war with Spain. The governments of the two respective countries,

being of opinion that a speedy and equitable settlement of all such claims will [would] contribute much to the maintenance of the friendly relations . . . between the two countries,

⁸⁹ Department of State, Records of Opinions and Awards, of Mixed Commission, . . . , July 17, 1863, pp. 40-41; *vide* Clay to Cass, April 11, 1858, with enclosures, Despatches from Peru, XV; Moore, *op. cit.*, II. 1629 ff.

concluded their fourth claims convention in Lima on December 4, 1868, where ratifications were exchanged on June 4, 1869.⁹⁰

This convention provided for the appointment of two commissioners, one by the president of the United States and one by the president of Peru, who were to meet at Lima within three months after the ratification of this convention and then and there to

name some third person of some third nation to act as an Arbitrator or Umpire in any case or cases on which they may [might] themselves differ in opinion.

The commission as organized was to have jurisdiction of "no claim arising out of any transaction of a date prior to the 30th of November, 1863. . . ."⁹¹ Otherwise it was authorized to settle all claims yet unsettled which had been presented to either government for its interposition since "the sittings" of the commission under the convention of 1863 (November 27, 1863); or any other claims which might be presented to the commissioners "within two months from the day of their first meeting". By Article III the commissioners could, whenever they saw fit, extend the period for presenting a claim "to any period not exceeding one month longer", that is, until December 4, 1869. As a result of these stipulations regarding the claims over which the commission had jurisdiction and in conjunction with other stipulations quite similar in the convention of 1863, any claims that might arise between April 18 and November 30, 1863, would be inadmissible before the commission;⁹² furthermore, as the next paragraph makes clear, Article V prevented any such claim from ever being settled by future commissions. When a more de-

⁹⁰ Malloy, *op. cit.*, II. 1411 ff.; Aranda, *op. cit.*, VII. 419. Full text of convention.

⁹¹ Article II. Three days after the previously studied commission adjourned.

⁹² The wording of the Convention of December 4, 1868, leaves room for doubt as to whether a claim that arose between November 27 and 30, 1863, would come within the purview of the commission. No such claim, however, has come to the attention of the writer.

tailed study is made of the specific cases that came before the commission, it can be seen how the terms of the convention, respecting claims that should and those that should not be admitted, worked a hardship on claimants whose claims were well founded both in law and in equity.

That the termination of the labors of this commission on February 26, 1870, definitely concluded the early period of United States-Peruvian claims relations is clearly evidenced by Article V. This article automatically debarred and treated as finally settled all claims arising out of any transaction prior to June 4, 1869 (the date of the exchange of ratifications in Lima), as far as future commissions were concerned, unless such claim was settled by this particular commission.⁹³ In including this clause debarring all claims on a specified date regardless of any other consideration, the convention of 1868 differed from the other three of this early period of claims relations; and what is more to the point, it concluded once and for all the claims relations of the two countries to date in so far as future claims conventions and commissions were concerned.

Many of the claimants and persons connected with the commission having read Article V came to the conclusion that all claims

arising out of any transaction of a date prior to the 4th of June, 1869, whether such claims were presented or not, whether they were granted or dismissed, were to be considered and treated as finally settled, barred, and therefore inadmissible, not only by future commissions, but also by the courts of either country.⁹⁴

⁹³ Article V reads: "The high contracting parties agree to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commissioners, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and therefore inadmissible". (Malloy, *op. cit.*, II. 1411 ff.)

⁹⁴ For Mr. Vidal's final report dated February 26, 1870, *vide* Department of State, Peru Claims, 1868; printed in Moore, *op. cit.*, II. 1645 ff.

While there can be no doubt but that the article in question did bar all such claims from the consideration of future commissions, Commissioner Vidal makes it equally clear that it did not bind the courts of either country in respect to the claims in question. Mr. Vidal continues in part:

It is evident that such can not be the meaning of that article, for the high contracting parties had no authority to deprive claimants of their legal means of redress before the ordinary courts of the country where the transactions took place, and, had they that right, they would not use it.⁹⁵

In accordance with the terms of the convention, Mr. Michael Vidal of Louisiana was appointed commissioner for the United States, as already indicated, and was assisted by Señor Francisco García Calderón as agent and by Louis de Arze as clerk.⁹⁶ The Peruvian contingent of the commission consisted of Señor Lucian B. Cisneros, commissioner; José Simeon Tejeda, agent; and Juan Francisco Pastor as clerk. The two commissioners being unable to agree on one person to act as umpire chose two, one of whom when determined by lot was to act on cases in which the commissioners themselves were unable to come to a decision.⁹⁷ Mr. Vidal named a British subject, Frederico B. Elmore as umpire, while Señor Cisneros for his part decided upon the Colombian minister at Lima, Señor Teodoro Valenzuela, both of whom agreed to act.

The commission was in session from September 4, 1869, until February 26, 1870, during which time it held seventy-nine meetings and incurred expenses amounting to \$12,993.63 (14,033,13/100 soles). An allowance of five per cent on the amount of the awards, as provided for, failed to measure up

⁹⁵ *Ibid.*

⁹⁶ Department of State, Peru Claims, 1868: Proceedings and Awards of the Commissioners & Umpires under the Treaty between the United States of America and the Republic of Peru . . . according to Convention . . . signed at Lima on the Fourth Day of December, in the Year of Our Lord, One Thousand Eight Hundred and Sixty-eight; Moore, *op. cit.*, II. 1640 ff.

⁹⁷ Provided for by Article 1.

to that amount; the United States contributed \$210.37 to make up the deficit.⁹⁸

The only claim presented against the United States was that of Esteban G. Montano which has been referred to at length in this paper in connection with the convention of 1863.⁹⁹ The award of \$41,781.73 (including interest) which Señor Montano had been granted in 1863 was worth only about \$15,000 in gold when, in July 1864, he came to Washington for payment; consequently, Mr. Vidal in his final report of the work of the commission dated February 26, 1870, "had the honor to report" that Esteban Montano had presented a claim against the United States for \$120,600. By way of concluding the Montano case, no better can be done than to quote Mr. Vidal:

Montano's claim, which originated from a difference of opinion in regard to the true meaning of a special sentence in the decision of the umpire of the commission of 1863, seems to be doomed by a kind of fatality to beget new claims every time a commission has adjusted it. Umpire Elmore, to whom the claim was referred this last time, stated in his decision that his award to Montano was 62,000 soles, or 57,040 American gold dollars. Now, our dollar being worth 1 sol and eight cents, it follows that 62,000 soles are worth \$57,407.40; but the commissioners, unwilling to open the door once more to that phoenix-like claim, decided to put the award at \$57,040 only in their official docket, and the certificate, and never mention the 62,000 soles. It is to be hoped that Mr. Montano will not peer out once more, ten to fifteen years hence, with a claim against our government for \$367.40 with interest, compensation for deprivation of profits, indemnity for loss of time in prosecuting his claim, traveling expenses, etc.¹⁰⁰

An appropriation for final payment of the award was made by the United States Congress July 15, 1870.¹⁰¹

⁹⁸ See footnote 96 above.

⁹⁹ See page 50 above.

¹⁰⁰ See footnote 94 above. A report from the United States minister in Peru (Alvin P. Hovey) on the final awards of this convention is to be found in United State Senate, 41 Congress, 2 Session, Executive Document, No. 81, pp. 2-3.

¹⁰¹ Adee to Hevner, December 4, 1891 (cited from Moore, *op. cit.*, II. 1849). The President had on April 14, 1870, recommended that this appropriation be made (Richardson, *op. cit.*, VII. 59).

Against the Peruvian Government twenty-two claims to the total amount of \$1,177,009.39¹⁰² were presented in respect to which fifteen awards amounting to \$194,417.62¹⁰³ were made. Of the seven claims that were not admitted, one was disallowed as being groundless,¹⁰⁴ another

for being one of those claims which, in the opinion of the commissioners, neither the United States of America nor Peru would willingly allow an international court to adjust,¹⁰⁵

while a third was simply dismissed.¹⁰⁶ Three other claims, the report strongly suggests, though thrown out by the commission on account of Article III prohibiting claims from being prosecuted after December 4, 1869, were well-founded both in law and equity.

A case which, though unfortunate, is interesting was that of Mrs. Fidelia C. Byers, a United States citizen, whose husband had died leaving her no means whereby to return to her native land. The commission was debarred of the right to adjust this equitable claim by Article II of the convention, which deprived the commission of jurisdiction over claims "arising out of any transaction of a date prior to the 30th of November, 1863. . . ." Mrs. Byers' claim arose out of a judgment rendered by a Lima court, November 25, only two days before the claims commission of 1863 then sitting at Lima adjourned. Commissioner Vidal, in making his final report on this case, begs "to be excused for expatiating on that subject, but really", as he continues,

¹⁰² In Peruvian silver, 1,271,179.16 soles. This figure does not include the claims of Henry Curtis, John Gillis, and Maria Reyes de Cox which were dismissed by the commission and for which no figures were given.

¹⁰³ 209,971.15 soles.

¹⁰⁴ That of Abraham Wendell who held that the Peruvian Government had broken its contract for the construction of a bridge with him.

¹⁰⁵ The claim of Peter Hevner "for work done for Peruvian war vessels in 1864" while the United States was at peace with Spain.

¹⁰⁶ The case of Rollin Thorne, an American citizen, who substituted himself for the true claimant, a Peruvian citizen, "in order to enjoy the privilege of having the case already lost before the courts of Peru, adjusted by the commission".

that widow having nothing to support her family but what she can earn by teaching, did not expect till the very last hour she would find herself deprived of all hope of ever having the means to come back to her native land in consequence of an error in the convention.

She had presented a claim for \$31,645.18.

Of the fifteen claims that were awarded and cost the Peruvian Government \$194,417.62, eleven arose as a direct result of revolutionary disturbances and riots and out of the fact that the central government was overthrown. Two cases that are typical will serve as illustrations:

The property of Richard T. Johnson was destroyed on January 13, 1868, in the province of Lambayeque, and

. . . he was personally and permanently injured by armed bands headed by the governors of adjacent towns, instigated by the superior authorities of the province, who were dependent upon and immediately represented the supreme government.¹⁰⁷

Being unable to secure justice through the ordinary channels of judicial procedure, he presented a claim to the commission for 23,000 soles and was awarded 11,480 Peruvian silver soles.

The case of Frank Isaacs also serves to illustrate claims which arose against the Peruvian Government as a result of revolutionary disturbances. On the morning of November 6, 1865, it appears that a mob in Lima attacked the presidential mansion. The soldiers who were defending the mansion did great damage to the two cigar stores of Mr. Isaacs by their firing; and after the soldiers had been defeated, the mob plundered the stores for what they were worth.¹⁰⁸ Though Mr. Isaacs had presented a claim for \$12,828.14, he was awarded only \$2,777.77. The morning's business had not been so profitable as he might have hoped.

Each of the four claims remaining out of the fifteen which were awarded had nothing in common with the others thus far mentioned, and nothing in common with each other. Santiago Cobb Montjoy received \$10,185.18 for losses suffered

¹⁰⁷ Moore, *op. cit.*, II, 1656.

¹⁰⁸ *Ibid.*, II, 1652.

when the local authorities maliciously cut off the water from his rice plantation.¹⁰⁹ Adolphe Rosenwig eventually won in the contest he had with the Peruvian Government; the English ship *Tudor*, laden with guano belonging to the Peruvian Government, caught fire and sank near Callao, and Rosenwig purchased its hull at auction sale. After having ordered Rosenwig not to take the guano or to destroy it, the government commanded that he move the ship within a fortnight in order not to endanger navigation further. Rosenwig in reply stated his intention of raising the ship after the government had removed its cargo, to which the government replied that it would take the cargo as soon as the ship was afloat. In the end both parties stuck to their guns, and neither the ship nor the cargo was raised; however, Rosenwig was awarded \$17,985.18.¹¹⁰

Henry Milligan was awarded \$69,444.44 as damages

for the alleged arbitrary revocation by the Peruvian government of a contract granted to an American company, represented by the claimant, to build and own for a number of years a macadamized tramway between Callao and Lima and a horse railroad on several streets of the latter city.¹¹¹

The case of Charles Weile ends a study of the awards made to United States citizens against the Peruvian Government. While consul of the United States at Tumbes, Weile came to the aid of a Peruvian woman who was defending herself against her husband. Alleging that Mr. Weile dealt the husband a blow that proved almost fatal, the Peruvian authorities imprisoned Weile who escaped from the country before the completion of his trial. Inasmuch as Mr. Vidal desired to impress upon the local authorities the lack of wisdom in dealing thus hastily with the consul of a friendly power, and considering that the nearly fatal blow was inflicted upon the husband by the wife, Mr. Weile, "for wrongful arrest and imprisonment", was awarded \$32,417.62.¹¹²

¹⁰⁹ *Ibid.*, II. 1652.

¹¹⁰ *Ibid.*, II. 1652.

¹¹¹ *Ibid.*, II. 1643 ff.

¹¹² *Ibid.*, II. 1644 ff.

The commission had been wise enough on December 15, 1869, to determine the rate of exchange that was to be applicable to the awards made. All awards were to be made either in the gold dollar of the United States or in the Peruvian silver sol; the United States gold dollar in these awards was to be equivalent to one sol and eight centavos. Had the commission of 1863 seen fit to establish a rate of exchange, much trouble would have been avoided.

SUMMARY AND CONCLUSION

The aim of this paper has been to show something of the nature of the claims relations of the United States and Peru over a well-defined period of time, namely, from the date of their earliest contacts to February 27, 1870. That the date of their earliest contacts, roughly speaking from 1822-1825, marks a satisfactory point of departure is at once evident. February 27, 1870, the day when the commission sitting under the convention of 1868 adjourned, likewise constitutes a well-defined division point, as has been shown in considering Article V of the convention of 1868: this article, rendering the convention of 1868 different from others of this period and a *sui generis*, fixed the latter date as one automatically concluding, once and for all, the claims relations of the countries up to that time.¹¹³

In contrast to claims presented during this period by Peruvian citizens against the United States amounting to \$781,282.08, citizens of the United States advanced claims against the Peruvian Government to the amount of \$3,685,125.22.¹¹⁴ Of these amounts, Peruvian citizens were actually awarded approximately \$99,991.73,¹¹⁵ slightly more than one-

¹¹³ See note 93 above.

¹¹⁴ These estimates do not include two claims of 1863 listed in value as "indefinite"; neither do they include three claims presented to the commissioners of 1868 that were dismissed, no estimate of their value being presented.

¹¹⁵ This includes the principal of \$24,151.29 with interest at 6 per cent per annum from September 2, 1851 to November 2, 1863, as was awarded to Esteban G. Montano. I computed the interest to be \$17,630.44. The figure given in *Arbitrations and diplomatic Settlements of the United States*, p. 20, is in round numbers and does not include interest.

eight of the amount presented; whereas United States citizens received approximately \$669,309.18,¹¹⁶ or a little more than one-fifth of the original presentations. Involved in these amounts were eighty-one different claims¹¹⁷ having to do with losses, damages, and injuries in person and property both on land and sea. Only five of these cases were against the United States, the remaining seventy-six being cases in which Peru was the defendant. Of the three awards against the United States, all of the claims had arisen in the ordinary course of civil procedure;¹¹⁸ but of the forty-nine awards against the Peruvian Government, forty were claims that had arisen in connection with revolutionary activities and disturbances. In

¹¹⁶ This figure means simply American dollars. No attempt has been made to reduce the whole to the American gold standard as of a certain date. The indemnity under the convention of 1841 was paid in hard dollars of the same standard and value as those (*en pesos fuertes*) that were then coined at the mint in Lima; the \$194,417.62 awarded by the convention of 1868 was paid in American gold dollars; while the remaining amount of \$79,901.73 awarded by the commissioners of 1863, who deemed it "impossible to establish any rule to govern the action of the two parties to the convention in this respect". They stated merely that the awards to the above number of American dollars (including the interest allowed) were to be paid some "in pesos fuertes", some "in the current money of Peru", one "in the current money of Peru or its equivalent in the current money of the United States", another "in the current money" (f) and still another "in the current money of the country" (f). (See Moore, *op. cit.*, II. 1620-1621.)

This sum includes \$394,989.83 which United States citizens actually received in fulfilment of the terms of the convention of 1841 (though the United States attorney general made awards totaling \$421,432.41, the principal of \$300,000 with interest never reached this amount); \$79,901.73, which includes interest where it was allowed, awarded in 1863; and \$194,417.62 allowed by the convention of 1868.

The figures given in *Arbitrations and diplomatic Settlements of the United States*, pp. 13-14, 20, do not take into consideration anything but the principals awarded even though interest was in some cases awarded to the claimant along with the principal. What appears to be an error of calculation is apparent on page 14, where "Awards in favor of the United States" are listed at \$57,196.23 instead of \$67,197.23. Professor W. S. Robertson ("Hispanic-American Relations With the United States", p. 166) apparently caught the error and modified the figures accordingly.

¹¹⁷ The Esteban Montano claim has been counted twice.

¹¹⁸ The case of the *Alleghanian* against the United States arose as a result of the War of the Rebellion in the United States, but no award was made.

other words, for lack of a government able to maintain peace and order, Peru paid to the United States approximately \$473,227.01, including the claims that arose during the struggle for Peruvian independence.

Over and above these few facts and statistics, this study of a period extending over half a century has tended to reveal the existence basically of a mutually friendly disposition and a desire on the part of both countries to work in harmony and accord. It cannot be doubted that the governments of both believed generally in the principle of arbitration as a workable procedure in the relations of nations.

Some light may also have been thrown on the internal condition of Peru throughout this period. That nation is seen in the turmoil and instability of political adolescence. Frequent revolutions, in addition to being the source of claims controversies, bred unstable governments; and constantly changing governments, with their ever-shifting personnel, made for a lack of continuity in policy and a tendency on the part of the government to slight and to neglect international obligations made by its predecessors. High officials, finding themselves part of an administration lacking both political stability and pecuniary resources, were too often inclined to resort to quibbles and excuses where candor might have served them better.

There was scarcely a month during the entire period when the United States was not pressing Peru regarding some phase of the claims question. Generally, this pressure was nothing more than that of the most ordinary diplomatic kind, a form of persuasion which until 1860 Peru doubtless never thoroughly understood, but until that time one beyond which the United States steadfastly refused to go. Properly interpreted the *Georgiana* and *Lizzie Thompson* episode was but a part of the larger claims question. The rupture of diplomatic relations ensued in October, 1860, not simply because the southern republic refused to agree to pay for the two confiscated vessels, but because it failed to agree to make some

compensation for them at this time—after it had, over a period of years, failed to make adjustment satisfactory to the United States of other outstanding claims as well.¹¹⁹

The year 1860 marked a turning point in our claims relations with Peru. Writing to Mr. Clay in Lima on April 25 of that year Secretary of State Cass said:

It is evident that the time has arrived when it is necessary for the United States to disabuse the governments of this hemisphere of a misapprehension by which they have too long permitted themselves to be influenced. . . we have dealt with them in a spirit of kindness and moderation, and in all cases have refrained from resorting to extreme measures for redress until all diplomatic efforts have failed.

This forbearance has been followed by a result, which now calls for an efficient remedy.¹²⁰

With the advent to power in 1861 of the Lincoln administration and the renewal of diplomatic relations, however, a policy toward Peru was inaugurated which was as generous and conciliatory in its bearing as it was successful in its outcome. It had as its ultimate fruit the claims conventions of 1863 and 1868.

Throughout the fifty years covered by this paper there was manifest a steadfast determination on the part of the United States to have the principle of obligation recognized and to force Peru to live up to its obligations once they were made. However, there was withal a decided willingness to scale the actual pecuniary values involved.

LOUIS CLINTON NOLAN.

Washington, D. C.

¹¹⁹ Clay to Cass, October 27, 1860 (Despatches from Peru, XVII; *Correspondance Diplomatique*, pp. 526-527), lists nine different claims pending before the Peruvian Government at that time for the settlement of which Clay had pressed without avail over a period of years. One of these claims was five years old, another four, and still another two.

¹²⁰ Cass to Clay, Instructions to Ministers, Peru, XV. 273 ff.; *Correspondance Diplomatique*, p. 462 ff.

BOOK REVIEWS

O Rei do Brasil: Vida de D. João VI. By PEDRO CALMON. (Rio de Janeiro: Livraria José Olympio, Editora, 1935. Pp. 336.)

This life of King João VI. is the second in a series of three volumes planned by Dr. Calmon. The first, *O Rei Cavalleiro: a Vida de D. Pedro I.*, was published in 1933, and the third, yet to appear, will treat of Dom Pedro II.

Since the biography is based largely, if not entirely, upon printed materials, it offers no new facts; and the author did not aim to present any. His purpose, stated in the preface, was to transform the "deplorable caricature" of King João, which is so popular in both hemispheres, into an authentic portrait.

On the whole, he has done better by João VI. than most writers, but it is questionable whether the impression he gives of the unfortunate ruler is as true to the facts as that to be had from Oliveira Lima's *Dom João VI no Brazil, 1808-1821*. Dr. Oliveira Lima refrains from playing up the sovereign's physical peculiarities, but Dr. Calmon makes frequent allusions to João's feeble legs and fatness, resulting to some extent in persistence of the caricature which it was his avowed aim to destroy. Pedro Calmon has, however, produced a more readable book than the much longer work of Manoel de Oliveira Lima. His brisk, colorful, dramatic style insures that. Much pageantry of Portuguese and Brazilian history—tragic and comic—is caught between the covers of the volume. Furthermore, the author has given, in brief compass, an unusually clear account of important periods in the history of the two countries.

About half of the volume is devoted to Brazil, which João loved, and where he longed to remain, and which Carlota Joaquina loathed, and from which she sought to escape. The relations of the king and queen to the Plata question, and also the relations of João and his son Pedro over governmental principles are especially well presented. It is quite apparent that father and son quite failed to understand each other.

Dr. Calmon thinks well of King João VI., and he justifies his estimate. He shows that the king, far from being stupid in political

matters, as English writers are given to represent, was rather shrewd, as was shown in various connections, especially in his outwitting his wife in her ambitions regarding the Banda Oriental. Furthermore, João brought to Brazil civilization, superficial culture, and basic laws, thus creating the empire which his son proclaimed and ruled.

Several portraits of the king illustrate the volume. There is no formal bibliography, but at the end of the book is a considerable list of citations of authorities, with page references. The growing tendency on the part of Hispanic American historians to be specific in giving sources for their statements is much to be commended. May it become a general practice!

MARY WILHELMINE WILLIAMS.

Goucher College.

Costa Rica and Civilization in the Caribbean. By CHESTER LLOYD JONES. ["University of Wisconsin Studies in the Social Sciences and History"]. (Madison: University of Wisconsin, 1935. Pp. ix, 172.)

Professor Chester Lloyd Jones, in his *Costa Rica and Civilization in the Caribbean*, gives an interesting survey of the conditions, problems, and progress of the smallest of the tropical republics which at the same time is one of the most advanced. The approach is largely from the economic point of view. According to the author, Costa Rica was chosen for this study because it is a state "in which, especially if its limited resources be considered, remarkable advance—economical, political, and social—has been made during the past generation". Particularly emphasized are the limitations on progress which are the result both of the hand of nature and of the human element.

Two chapters give a sketch of the history of Costa Rica from its discovery to the present, in which the political ups and downs are indicated. These chapters are summaries based on a few Spanish works. Then follows a discussion of the people, their health, and their educational problems. The composite nature of the population, the handicaps to health in the tropical region, and the notable educational progress of Costa Rica are respectively set forth. The effects of these phases, the achievements and the remaining problems are all considered. Costa Rica, like other tropical countries, depends on a few agricultural products for the production of its national wealth.

These are coffee, bananas, and cacao, together with some other fruits and subsistence crops. The history of the national crops and their influence on national economy are studied. Enough statistics are given to show trends and the need for the expansion of subsistence crops is pointed out. The story of communication is the history of railway building. It shows the contribution of foreign initiative and capital in the development of the country as well as the problems which arise in the wake of development under such circumstances. The discussion of trade deals entirely with exports and imports. Exports are controlled by the production of a few crops and the prices of them which in turn determine the extent of the imports. The account of the foreign indebtedness of the country runs parallel with that of the other Hispanic American nations and on the whole it is not a record of which the country can be too proud. The survey of Costa Rica is concluded with a study of social conditions and progress during both the colonial and national periods.

Professor Jones concludes his volume with three chapters which consider the general problems of the Caribbean region, basing these largely upon the facts set forth in the study of Costa Rica. In conclusion, he lays down five factors which he feels are essential for the future greater progress and achievement of the region. These are summarized as follows: 1. A modification of the conditions of tropical life must be brought about to permit more sustained industrial effort by the laboring classes; 2. The ambition of the individual must be spurred on through new desires to a dissatisfaction with the present minimum of subsistence; 3. Development of export production and markets must be secured to broaden the economical basis of the national life; 4. The establishment of new local industries must be effected; and 5. The employment of more national wealth in local industry must be brought about.

There is little to criticize in the work. Exception, however, should be taken to the statement on p. 21 regarding the failure of Central American union in 1921, wherein the implication seems to be that Nicaragua was chiefly to blame. The facts are that El Salvador was as intransigent as Nicaragua at the San José Conference, that each of the five republics contributed a share to the failure, and that the failure was the result of the ever present attendant circumstances and conditions which have always made union so improbable.

A fundamental fact which is brought out by this study is that the

real problems of Costa Rica and the Caribbean are of a domestic character. Since the work is a factual statement of the problems and difficulties which confront the Caribbean countries and the efforts which are being made to solve them, it is most helpful. Volumes of a similar character dealing with others of the Hispanic American neighbors would indeed be most welcome.

ROSCOE R. HILL.

Washington, D. C.

The United States and Europe, 1815-1823. A Study in the Background of the Monroe Doctrine. By EDWARD HOWLAND TATUM, JR. (Berkeley: University of California Press, 1936. Pp. x, 315. \$3.00.)

This book is worthy the consideration of students of Hispanic American history as an analysis of the popular attitude in the United States out of which the Monroe Doctrine grew. It does not purport to be a narrative of events, with which the author assumes his readers are conversant. Its contributions are rather a painstaking portrayal of expressions in the public press, a review of significant statements of political leaders, and an interpretation of the intent of the doctrine's framers.

Dr. Tatum's thesis is that antagonism toward England was an increasingly influential factor in our foreign policies of that period, and that Monroe's declaration was aimed at Great Britain, which coveted Cuba and Oregon, rather than at the Holy Alliance and Russian aggression in the northwest. He feels that previous authors have missed this point because they have studied European, rather than the American, causation. It is a cogent argument, presented with ability and style. It is stimulating, and the author is wise in directing us to a more thorough study of the native background. Many readers may believe that he is extreme in his complete repudiation of earlier explanations of the doctrine.

This reviewer, in making a detailed study of another phase of United States diplomacy of the same period, has not been impressed as has Dr. Tatum by the extent of hostility between this country and Great Britain, surely not to the point of feeling that war awaited only a provocation in 1821 (p. 84). The author notes that some historians have even thought the two countries friendly. His telling argument makes these differences worthy of thought.

The discrepancy may be explained in part by the testimony. Dr. Tatum is justified in leaning heavily on the press by the fact that in those days of slow and sparse communication the newspapers had nearly a monopoly on news. They practically made popular opinion as well as reflecting it, certain journals even being known as administration organs. But the editors were more concerned with popular emotion than with diplomatic amenities. The students who disagree with the author's contention will be those who have depended largely on the diplomatic correspondence, much of it unpublished, for their views. They perhaps see more directly the processes and policies of international relations than do the students of the press and of congressional debates only.

Another viewpoint on these varying interpretations lies in the comparison between our relations with England and those with other countries, which Dr. Tatum reviews in his opening chapters. Granted that there was animosity in public feeling toward England, and vice-versa, was it not more of an intra-family feud than the distrust one feels for strangers? Relatives can be superficially more bitter than mere acquaintances because they know each other better, but beneath there is a substantial bond. With England, Adams and Monroe were conscious of the fundamental wisdom of coöperation, despite popular knowledge of England's irritating traits. They received cautiously the friendly overtures of France and Russia (as Dr. Tatum explains), about which the public knew comparatively little. There were six treaties or agreements with England between 1815 and 1823. The diplomatic historian may ask if they did not have a similar significance to the eleven which the author cites between 1824 and 1856 as factors in breaking down the animosity between the two countries (p. 280).

The question of hostility toward England is one of degree, and is not the sole basis for the author's conclusion regarding the purpose of the Monroe Doctrine. He shows that no simple explanation can be had. One can hardly fail to realize that in the complexity of circumstances existing, distrust of British designs played a larger rôle than has usually been assigned to it. Dr. Tatum in a few incisive paragraphs effectively disposes of the alleged fear of Russian aggression in the northwest. His analyses of French and Russian policies and of such emotional attitudes as that of Calhoun in 1823 minimize, without completely undermining, the importance of fear of the Holy Alli-

ance. He gives less attention to the positive influence of United States sympathy for the Spanish Americans than most Hispanic American historians would expect.

The most effective chapter in the book is the portrayal of John Quincy Adams, the nationalist. A freshness of thought and expression, and emphasis on some hitherto underestimated statements of Adams, give it high quality. The historiographical essay is of the sort which well might accompany any such treatise. In judging earlier works only by their approach to his thesis, however, the author appears to neglect many of their merits which would stand out if one appraised them in the light of their authors' respective methods and purposes. The printing of the book excels both in accuracy and in format.

PHILIP COOLIDGE BROOKS.

The National Archives.

Historia de los Descubrimientos y Colonización de los Padres de la Compañía de Jesús de la Baja California. By CONSTANTINO BAYLE, S. J. (Madrid: Editorial "Razón y Fé", 1933. Pp. 230.)

Jesuit activities in Lower California embrace an important and interesting period in the history of the peninsula. The failure of many temporal expeditions to colonize California during the sixteenth and seventeenth centuries rendered the success of the religious an even greater and more lustrous achievement. Father Eusebio Kino, the Jesuit superior of the missionaries, who accompanied the expedition led by Admiral Isidro Atondo y Antillón in 1683, was undaunted by the failure of the enterprise, and through his enthusiasm, interest, and coöperation, Father Juan María de Salvatierra finally founded the first permanent mission and settlement at Loreto in Lower California in 1697.

In the present monograph Father Constantino Bayle has presented the accomplishments of his brother Jesuits in California as an illustration of the part played by the Church in the discovery, colonization, and civilization of the new world.

The vast resources of the Archivo de Indias, together with "the archives which did belong, or belong, to the Company of Jesus", and a number of other depositories, were consulted by the author for

original and inedited documents. Much use is made of Kino's *Favores Celestiales* from the text edited by Professor H. E. Bolton and published as *Kino's Historial Memoir of Pimeria Alta* . . . in two volumes in 1919, and the text published as Volume VIII of "Publicaciones del Archivo general de la Nación (Mexico), namely, *Las misiones de Sonora y Arizona. Comprendiendo: la Crónica titulada: "Favores Celestiales"* . . . edited by Francisco Fernández del Castillo, 1913-1922. The author comments quite erroneously that each editor apparently worked without knowledge of the other. This was actually not the case. The manuscript was unearthed in 1907 by Professor Bolton while he was engaged in preparing his monumental *Guide to Materials for the History of the United States in the principal Archives of Mexico*. He began the translating and editing of this work at once (see Bolton, "Father Kino's lost history, its discovery and its value" in *Papers of the Bibliographical Society of America*, Vol. VI, 1911), and his edition appeared in two volumes in 1919. The Spanish text edited by Fernández del Castillo, did not appear until 1922 with a title page postdated 1913. Father Bayle's brief estimate of the historical value of the *Favores Celestiales* is worthy of attention. A comprehensive survey of printed secondary works supplements the edited and inedited manuscript material.

The monograph is divided into nine chapters with a bibliographical appendix of manuscript material. Chapters I, IV, and IX deal with historical background, cartography, and bibliography, and a survey of agriculture, stockraising and industry respectively. Chapters II, III, V, and VI deal with the work of Kino in Sonora and California, while the success of Salvatierra in the spiritual conquest and a brief survey of the history of the Jesuits in the peninsula until the expulsion in 1768 are treated in two long chapters, VII and VIII. The bibliographical index, a list of documents with a short summary of their contents and their location, is exceedingly valuable.

The monograph is well written although lacking in organization. Its use is hampered by the absence of an index. The author frankly states his purpose and bias, yet the study is far more objective than might be expected from a clerical pen. It is a decided contribution to the literature of New Spain and colonial Hispanic America.

KATHERINE MOORE TATE.

Washington, D. C.

French Opinion on the United States and Mexico, 1860-1867. Extracts from the Reports of the Procureurs Généraux. Compiled and edited by LYNN M. CASE. (New York: D. Appleton-Century Company [c1936]. Pp. xxiii, 452. \$7.00.)

Here is a really worth while contribution to the source material of the period indicated by the title. The volume appears under the best of auspices and by its very nature must have the attention of students of the career of Napoleon III.

The editor points out that the press of the period in France was severely restricted and so rigidly supervised that it could seldom reflect any opinion unless it was in harmony with that of the administration. Yet to secure a knowledge of public opinion was essential to so new an empire as that of Napoleon. To this end regular reports were required from the *préfets* (the chief administrative officers of the *départments*) and from the *procureurs généraux* (who might be termed prosecutors in chief for the twenty-eight judicial districts of the nation). The *préfets* reported to the minister of interior and devoted most of their attention to administrative problems, while the *procureurs généraux*, the editor informs us, carefully followed the strict injunction to report fully on public opinion in regard to political, economic, and moral issues.

Dr. Case has had to cull his material from these reports, with the result that some more or less pertinent material may be omitted. However, there is no evidence of bias for contradictory reports are freely presented and the editor's own comments are to be praised for their impartiality. Outside of a possible over-enthusiasm for this special type of source as compared with the better known sources there is little criticism to be offered as to the approach.

About two-thirds of the material here presented deals with the war between the states and its effects on France. Beyond doubt, French public opinion was chiefly concerned with the economic effects of the cotton shortage and resulted in an all but universal cry for recognition of the Confederacy so as to secure the greatly needed staple.

The last 125 pages deal with the French expedition to Mexico and the Maximilian Empire established there. The reports show the French people only lukewarm in their approval of the expedition at first and later strongly critical of it as a waste of money and life. Here the editorial work is weaker than in the earlier part of the vol-

ume for there are practically no references to other large amounts of printed sources available to students. For instance, there are no references to the ten volumes, mostly correspondence, edited by Sr. Genaro García, dealing with the Intervention; or to Egon Caesar Corti, *Maximilian and Charlotte of Mexico*, 2 vols. (also published in German), which provides numerous letters of Napoleon, Maximilian, their empresses and other New and Old World leaders. This, however, does not weaken the value of the material provided, but does indicate that the student will have to provide his own guide in the use of it.

The author has of course retained the original grammar and spelling, though the mistakes, as he notes in his "Explanations to Readers", are not always noted with the result that a given minor error may be either typographical or in the original. However, the whole appearance of the work indicates care in its preparation, so that this is probably of little importance though regrettable. Very real praise is due to this effort to provide source material of such a type to the students and libraries of the country, and the administrators of the Beveridge Memorial Fund deserve the thanks of the profession for subsidizing its publication.

W. H. CALLCOTT.

Columbia, S. C.

Europa y México, 1861-1862. By JAVIER PÉREZ DE ACEVEDO, with preface by GASTÓN MORA. [Monografía Histórico Diplomática.] (La Havana, Cuba: Imp. Rambla, Bouza y Ca., 1935. Pp. 248.)

Here is a volume that approaches the kind of a study really needed in the United States. It has the truly important Hispanic American view of an Hispanic American subject. Likewise, it has the advantage of being written by a man acquainted with diplomacy and by one who can give the "feel" of conditions as they existed.

Unfortunately, the spade work behind the study has been all too scanty and several of the chapters appear to be based, wholly or in major part, on secondary accounts. Attractive chapter titles are used to cover the whole subject but the reader soon finds that in more than one case the treatment provides little or nothing on the subject at the head of a given section.

The approach is from the European angle and gives the attitudes of the powers as they approached intervention, though more refer-

ences to correspondence of the time is badly needed. Sketches of diplomatic personalities are especially good and the reader is given something of a real acquaintance with the actors in the drama. The best portion of the study is the second half where the complicated situation in Mexico is presented (again without adequate references) in a quite good and straightforward, though somewhat choppy, narrative style.

All in all, here is an account that suffers from being rather poorly organized and from inadequate documentation for a monograph on a technical research problem. However, a worth while story is told and the contribution is one not to be ignored by students in the field.

W. H. CALLCOTT.

Columbia, S. C.

Santa Anna. By RAFAEL F. MUÑOZ. (Madrid: Espasa Calpe, S. A. 1936. Pp. 259. 5 pesetas.)

This book, one of the most recent in the series called "Vidas Españolas e Hispanoamericanas del Siglo XIX", is an exceptionally splendid account of the life of surely one of the most unusual and enigmatic characters the new world has yet seen. The figure of Santa Anna loomed constantly important on the Mexican scene from the days of the war of independence until he finally was cast from power in 1855, and Sr. Muñoz, already well known as one of the younger authors and journalists of Mexico (especially for his trilogy on Pancho Villa), gives us the story in a most readable and interesting manner. It is obvious from the first that the author is complete master of his material, yet he chooses to relate not so much in scholarly as in popular vein, and in a clever style which changes its nature to suit the mood of the moment, with humor and sarcasm commonly in play. As a biography, this book is most impartial and should satisfy all, presenting as it does not alone the worst (and best known) side of Santa Anna but likewise giving proper credit to the better traits of the man. In other words, the author's treatment is sympathetic at times, critical and condemnatory at others.

Santa Anna! What a name to conjure with in those first hectic decades of the history of independent Mexico! A magnificent organizer, possessed of a fascinating personality, enormous energy, and unbridled ambitions, a good military strategist but inconceivably unfortunate in the direction of a battle, a shrewd politician of supreme

finesse in the art of intrigue and duplicity, patriot and also traitor, of a cruel, strongheaded, dictatorial disposition which never asked nor heeded the advice or wishes of anyone, with an uncanny sense of the dramatic which enabled him to capitalize on any situation which might arise—Santa Anna was all of this, and more.

The sub-title of the book, “*el que todo lo ganó y todo lo perdió*”, seems particularly well-chosen, aptly describing in few words the career of this man who truly was capable of gaining all the honors which his country had to offer him but who was never able to keep from losing everything. The author picks up the story of this turbulent person at the moment of his enlistment in the Spanish forces at Vera Cruz in 1810 and carries it through more than two exciting generations of plotting and fighting, of triumph and exile. And who could have gone through more of such things than Antonio López de Santa Anna? He was the first to turn against the Emperor Iturbide, rising up because of wounded pride and ambition; he acquired great popularity in 1829 when he defeated the expedition under Barradas sent out to reconquer Mexico for Spain; he commanded the Mexican troops in the unsuccessful war with Texas; he appeared very dramatically in Vera Cruz to beat back the French (and lose a leg) in the rather ludicrous “Pastry War” of 1838; once more he led the Mexican forces in their brave but futile defense in the war with the United States. In addition, he was engaged in almost countless uprisings (mostly bloodless ones) against whatever person chanced to be in power at the moment. For Santa Anna was incurably bitten by the “*pronunciamiento*” bug. The author makes no little sport of his oft-repeated exhortation to the Mexican people to bear ever in mind during any moment of distress that he always “stood ready to shed the last drop of his blood for his country”. It may almost be considered a miracle (and surely a tribute to his cleverness) that in all of his activities in revolts he was never taken captive and summarily executed, a fate suffered by many of his contemporaries.

Eighty-two years of age at his death, Santa Anna helped transform Mexico from a Spanish colony into a free nation, witnessed the reigns of both of his country's emperors, and was himself declared president on no fewer than eleven different occasions. Indeed, he could readily have made himself emperor more than once, but contented himself merely with the rôle of dictator and the title of “Most Serene Highness”. And, had he set himself up as emperor, his reign

would no doubt have been still shorter than that of either Iturbide or Maximilian, for the people never were able to stand Santa Anna in large doses. His longest term in the presidency lasted less than two and a half years, his shortest was of but thirteen days duration. Nevertheless, the people would no sooner succeed in removing him from the seat of power than they apparently would repent of their act and begin to clamor for his return. There was something about this amazing personage which fascinated the populace. Time after time they urged his return to power, until finally they came to regard him as almost indispensable. And Santa Anna, the shrewd politician, could always read accurately the pulse of public opinion and at unfavorable moments would retire (because of "poor health" to his hacienda called "Manga de Clavo", a vantage point from which he could safely survey matters and determine in which direction the wind was blowing.

The strange power of Santa Anna over the people must be accounted all the stranger when one considers that as a military man he was generally a failure (sometimes terribly so) and that as a ruler he was even worse. Possessed of much natural talent and some good qualities, he was never a success as president, principally because there was no fixed course and no determined object in his governing. One moment he was federalist, the next centralist; today liberal, tomorrow conservative. His record of serving eleven times as president in the face of all his failures indicates rather splendidly the utter political chaos in Mexico from the time of the defeat of Spain to the accession of Díaz.

The author tells at one point how Santa Anna, living in exile in the little city of Turbaco, Colombia, from 1850 to 1853, caused a small chapel to be built in the cemetery there with the idea of having his remains placed in this chapel when he should die. But he was not to die until 1876, and then in Mexico City, where his tomb can be seen in the cemetery on the hill above the great Basilica of Our Lady of Guadalupe. In surroundings as quiet and peaceful as his life was restless and turbulent, a simple stone marks the grave of this man who was, as Sr. Muñoz says in his closing words, eleven times president of the Republic, exiled by all America, millionaire and pauper, powerful and persecuted, tyrant and captive, patriot and traitor, hero and villain.

WALTER M. LANGFORD.

University of Notre Dame.

Obregón como Militar. By MIGUEL ALESSIO ROBLES. (Mexico: Editorial "Cultura", 1933. Pp. 203.)

The reader who expects to find in this book a discussion of the ability of Obregón as a general, will be disappointed, for there is little of that sort of discussion here. No doubt the author had a quite different purpose in mind, for he closes with this paragraph "We have now studied General Obregón as a military man. Later we shall study his personality as ruler of the Mexican nation". Evidently another volume is to follow, this first volume dealing only with the military life of the hero.

In tracing this military career, the author has written as though he were a newspaper correspondent on the spot, and not as an historian weighing motives, methods, and results from a study of official reports and documents in the archives. In fact, there is no indication either by citation in footnotes or by listing in a bibliography that any sources other than personal recollections have been used, with the single exception that in Chapters XII to XIII, Captain Carlos Robinson, who was present on those occasions, is quoted as to what took place during the heated interviews between Villa and Obregón, at the former's headquarters in Chihuahua, when Villa ordered Obregón to be executed. This exciting incident is well told and throws interesting light on the character of Villa, yet even here there is uncertainty whether the conversations quoted verbatim were reported from Carlos Robinson's memory or from written memoranda prepared by him.

This and other incidents reveal the jealousies existing in the camp of the Constitutionalists and especially the differences resulting in the break between Villa and Carranza. The characters of important commanders, such as Angeles, Robles, Sarrano, Calles, Diéguez, Gutiérrez, and Benjamin Hill, in addition of course to those of Villa, Carranza, and Obregón are illustrated by many intimate pictures of their military relationships and their life at headquarters. Since there is fully as much about the other leaders as there is about Obregón, this feature renders the book more useful to the historian than its title would indicate. In fact, as a history of the constitutionalist revolt against Huerta and of Villa's revolt against Carranza this work has considerable value.

Descriptions of campaigns and battles are meager, except in Chapter XVI where the final battles between Obregón and Villa are told

in vivid detail. Obregón's skill as a strategist is not clearly established, but there is no question left as to his energy, his quickness of thought, his care for the soldiers under him, his courage, and his loyalty. Apparently, his only military failing was a proneness to allow his base of operations to be threatened, and this the author seems to regard as a virtue in the case of Obregón.

The style in which exciting events are narrated is marked by unusual moderation and restraint. This is not only refreshing but adds to the impressiveness of the story. A single quotation will serve as an example. When at the defense of the hacienda of Santa Anna a shell exploded in the room where were assembled Obregón and his staff, all were thrown down by the concussion. "After Obregón recovered consciousness, he lacked an arm which the shell had carried away. Although the place was still under vigorous bombardment from the enemy's artillery, Obregón gave instructions to Generals Hill, Diégues, Castro, and Murguía that they should choose his successor as chief of operations to continue carrying on the campaign".

This book contains neither index nor bibliography. It is hoped that the author will remedy this defect in his *Obregón como Gobernante*, which is listed as in course of preparation.

ALFRED HASBROUCK.

Washington, Connecticut.

Ulises Criollo: La Vida del Autor Escrita por él Mismo. By JOSÉ VASCONCELOS. 5th ed. (Mexico: Ediciones Botas, 1936. Pp. 536.)

La Tormenta: Segunda Parte de Ulises Criollo. By JOSÉ VASCONCELOS. 3d ed. (Mexico: Ediciones Botas, 1936. Pp. 594.)

These two volumes of the autobiography of José Vasconcelos concern themselves with the cross currents of political movements in Mexico from Porfirian days to 1920. The third volume which is yet to appear proposes to deal with the Obregón-Calles administrations. Volume one ends with the death of Madero in 1913. It relates the history of the early life of Vasconcelos on the Sonora-Arizona frontier and as a student in the Mexico City of the dictatorship. An interesting section of this volume is devoted to the activities of the author who, with Madero, organized the clubs among the Indian *caudillos*, and created the political party that overthrew Díaz. As editor of *El Antirreleccionista*, Vasconcelos was exiled in 1910 by Díaz and went to New York.

Subject to the intense Catholicism of his mother, and brought early into contact with the Indians at Sásabe on the frontier, manhood found Vasconcelos reacting to these important religious and social factors in an understandable way. His first clear recollections of the raiding Indians begin in 1886. It is not mentioned that this occurred before the enslavement of the Yaqui in his native state of Sonora, and eight years earlier than the slaughter of the Tarahumara tribe whose plight, rather than savagery, was sympathetically described in fiction by Heriberto Frías in his novel *Tomochic*.

To Vasconcelos, the creole, the precious possession of Mexico is its Hispanic ancestry and tradition. Mexico therefore is Catholic, not Indian or Protestant. Those who follow Juárez, the agent of North American Protestantism under the Reform Laws, as well as those who follow Zapata and Díaz Soto y Gama, are not true to the real Mexico, the Mexico of the conquistadores. He is a thorough *criollo*—like Lucas Alamán, he prefers to think. Creolism is Hispanic culture which is being assailed by the “spurious Indianism” of the revolution. Zapata is a bandit leader who gave land, taken from Huertista *hacendados*, to relatives and a mistress. Madero is represented as the civilized, Hispanicized Mexican carrying on against Díaz (later against Pascual Orozco, Villa, and Zapata) the dramatic struggle, in terms of the Indian tradition, between Quetzalcoatl the Fair and Huichilobos, the Aztec Mars (p. 522).

La Tormenta, the second volume of the autobiographical trilogy, deals in some valuable detail, with the characters, the aims, and the struggles of the revolution. It begins with the exit of Vasconcelos from Mexico after Huerta's ascendancy in 1913, and ends with the provisional presidency of Huerta in 1920 when Vasconcelos returned from another exile in Los Angeles to become secretary of education in the cabinet, where his thoroughgoing reforms won him fame.

There is useful information concerning the ill-fated Convention of Aguascalientes and the short presidency of Eulalio Gutiérrez in 1915, and the struggles between Villa, Zapata, and Carranza. These sections of the volume may be profitably compared with the episodic *El Águila y el Serpiente* of Martín Luis Guzmán, *villista* and friend of Vasconcelos.

Conspicuous throughout both volumes is the hatred for Carranza, for Calles, and the *peligro yanquí*. Carranza, to the author, is not

the man responsible for the Plan of Guadalupe, or the Constitution of 1917, but is merely a puppet of the North replacing *porfiristas* and *huertistas* with his own corrupt followers. The Kemmerer mission to Mexico to arrange that country's finances is a special target in the latter pages of the second volume.

Calles, amicable toward Morrow and the Warren-Pani Treaty, the author holds to be an agent of a pro-North American philosophy. This philosophy, whose advocates are North Mexicans, he calls "pochismo", which strives for the overthrow of Hispanic culture and civilization where it flourishes most—in Mexico City. To this end also, an Indianism is fostered in Mexico, the American tradition is emphasized, archaeological and research institutions attract Mexican youth to their folds by prizes and scholarships, only to return them to government departments thoroughly able to spread their Indianism, as a part of the *drang nach süden*. Ultimately, he feels, this false Indianism, based upon the exaltation of a primitive culture, will erase the influence of Spain and itself be destroyed by materialism with the result that the position of the Mexican Indian and people will resemble that of the "fellaheen" in Egypt.

Apart from these musings, the two volumes shed a great deal of the warm and cold glow of personality on politicians, generals, and intellectuals who pass through the many colored prism which is Vasconcelos. In addition to his activity in Mexico's political, literary, and educational life, the author's three or four banishments took him abroad to Spain, France, England, the United States, and Peru. There are several interesting pages in *La Tormenta* of conversations with José de la Riva Agüero (II. 371-386), the famous Peruvian historian. In Peru he also met Valcárcel the archaeologist, and the García Calderón brothers.

The books are frankly didactic, interesting, although overwritten and, as the titles would indicate, personal. The record of crucial social events in these volumes is both biography and history and therefore important enough to be read, although the books stress political personalities rather than the economic processes of change through which Mexico has been passing.

HARRY BERNSTEIN.

New York City.

Colonial Hispanic America. Edited by A. CURTIS WILGUS. [Volume IV in "Studies in Hispanic American Affairs."] (Washington, D. C.: The George Washington University Press, 1936. Pp. 690. Appendices. Index. \$5.00.)

This volume marks a continuation of the excellent work of the Seminar Conference on Hispanic American Affairs, held annually during the summer session period at The George Washington University. Like the preceding volumes of this series—*Modern Hispanic America* (1933), *The Caribbean Area* (1934), and *Argentina, Brazil and Chile since Independence* (1935)—this volume, also, is composed of the lectures delivered at the seminar. The editing is the work of Dr. A. Curtis Wilgus, at that time the active and efficient director of the Center of Inter-American Studies at The George Washington University.

Consisting of nineteen chapters, nine appendices, and an index, *Colonial Hispanic America* presents material on the significance of Hispanic American colonization (17 pp.); the geographical, native, and European backgrounds (131 pp.); a portrayal of colonial society (203 pp.); discussions of colonial international relations (62 pp.); and of the several movements for independence (92 pp.). While it might be possible to question the advisability of devoting approximately one-fifth of a book on colonial Hispanic America to a consideration of the movements of independence, yet the general balance of the work is excellent.

Naturally, the work centers upon the actual portrayal of colonial society. This section, consisting of six chapters, covers the Spanish conquest and settlement, colonial government, the rôle of the Church in colonial Spanish America, a description of colonial society, the transmission and diffusion of culture in the Spanish American colonies, and colonial economic life.

Of the nine appendices, five are bibliographical accounts of histories and historians of colonial Hispanic America. An author index to this material is included. The other four appendices deal with a consideration of the Catholic church as an economic factor in colonial Hispanic America, the work of the early Franciscans in Florida, colonial Brazil as an element in the early diplomatic negotiations between the United States and Portugal, and, finally, the Spanish royalists in the United States. The volume ends with a general index.

To discuss each of these excellent studies individually would in-

volve an undue extension of this review. In general, it may be said that the purpose of this book is a two-fold one, involving summaries of familiar material in such form that the various aspects of colonial Hispanic American society may be covered within the space of a single volume, and also involving contributions of new material to the Hispanic American field. Illustrative of these two types of study are: the excellent discussion of the native background in Hispanic American history, by Mr. Philip A. Means; Dr. Irving Leonard's study of colonial society, with its analysis of the way colonial Hispanic America earned its living and passed its leisure time—themes too generally neglected in the past; and Dr. Marie Madden's lecture on the European background, an analysis, not of European events, but of the specific Spanish modes of thought behind the conquest and rule of colonial Spanish America.

The double purpose of the work has, unfortunately, led to certain omissions, and this despite the fact that several studies are supplementary in character. For example, the conquest and settlement of Brazil are not included in a general chapter on the topic, although they are mentioned, incidentally, in Dr. James A. Robertson's interesting introductory study on the general significance of Hispanic American colonization. Similarly, though there are three chapters on the rôle of the Church in colonial Hispanic American society, almost nothing is included about the position of the Church in Brazil, or about that great body of church literature which must be one of the prime sources for the Hispanic American historian, and which is of interest to scholars in such related fields as geography and anthropology as well. The importance of the type of literature represented by such names as those of Falkner and Dobrizhoffer should be stressed beyond a mere inclusion in a bibliography. Again, there is little indication of the important work of the Church in the study of Indian languages and civilization. Finally, while there is a chapter devoted exclusively to the Church as an economic factor in colonial society, as well as a general chapter on the Church in colonial Spanish America, those studies are largely concerned with church organization, the relation of church to state, and the source of church income: there is a lack of emphasis on the positive accomplishments of the Church in the advancement of colonial economic life.

In a book of such breadth of scope, however, some omissions are doubtless inevitable. In fact, the peculiar value of this work lies in

its collection of authoritative studies on the many phases of Hispanic American colonial life. The addition of maps and extensive bibliographical guides to further material increases the usefulness of the book for reference purposes. It is unfortunate that in a work of such general excellence and usefulness, the proofreading should have been so badly done. There are, literally, hundreds of errors. As Hispanic Americans have not always been too careful in their regard for such niceties of style as a proper regard for the Spanish rules for capitalization, many of the errors noted can be explained by a possibly deliberate quotation of originally incorrect titles.

MADALINE W. NICHOLS.

Berkeley, California.

Cuba antes de Colón. By M. R. HARRINGTON . . . [and] *Historia de la Arqueología cubana.* By FERNANDO ORTIZ. [Vol. XXXII and XXXIII "Colección de Libros Cubanos".] (La Habana: Cultural, S. A., 1935-1936. Pp. XX, 290, 457. Illus. Paper, \$1.50 each. Bound, \$2.00 each.)

Fernando Ortiz, that leader of modern thought in Cuba, who also has one of the best equipped minds in the Spanish-speaking world, has rendered great service to archaeology in printing this excellent and well interpreted Spanish translation of Harrington's *Cuba before Columbus*, the latter edited by the Museum of the American Indian, Heye Foundation, of New York, in 1921. The book, very unfortunately indeed, is still incomplete, as incomplete as Mr. Harrington left it in English when publishing the first part of his work, in two volumes, years ago. The well-known archaeologist has been giving his time and his interest to other important researches in his field, and still we wait for the last part of his study, which promised to be the standard work about the primitive cultures of Cuba in pre-Columbian times.

Nothing, therefore, shall we add here about Mr. Harrington's book itself, highly praised by scientific opinion when it appeared in English. The Spanish edition under review, however, has special features of great importance, completing the study of the subject, with the *Historia de la Arqueología indocubana*, by Fernando Ortiz, comprising some four hundred pages of the second volume. This is a second edition, revised and brought up to date, of the work of the same title published by Dr. Ortiz in 1922, and it is a most useful

and fundamental treatise on the subject. This is a work that must be consulted by every person interested in Cuban archaeology, in order that he might learn of the investigations carried on relative to the past of the aborigines of Cuba, the scientific conclusions arrived at as a result of accounts of early colonial historians, and of explorations and findings made from the sixteenth century up to the present day; for even the English version of Sven Loven's book is discussed in detail. On the other hand, it is fair to say that Dr. Ortiz has not simply put together a number of bibliographical references and a list of dates and places of archaeological findings. In all cases he has added authoritative remarks interpreting facts, materials, and opinions leading to most valuable scientific conclusions. It could properly be said that the Spanish edition of Harrington's *Cuba before Columbus*, supplemented with the excellent work of Dr. Ortiz, gives the last word relative to Cuban archaeology, in one of the areas of the new world presenting most interesting and complex problems to the investigator.

Another improvement to be noticed in the Spanish edition—forming volumes XXXII and XXXIII of the "Colección de Libros Cubanos" edited by Dr. Ortiz—is the archaeological map of Cuba, in six plates, prepared by Fernando Ortiz and Ernesto Segeth-Zeiss, in which are located all the archaeological zones in the island, perfectly classified as to the culture represented, the implements found and by whom, and all the remaining information necessary for determining the spread of the different cultures over the island.

The chapter in which Dr. Ortiz gives his interpretation of how the Indians of Cuba disappeared, is full of human interest and provides perhaps the only scientific explanation yet given of how and why the Cuban aborigenes disappeared before the end of the sixteenth century.

HERMINIO PORTELL VILÁ.

Black Mountain College, N. C.

Agramonte: El Bayardo de la Revolución Cubana. By CARLOS MÁRQUEZ STERLING. [Series Biografías Cubanas.] (La Habana: Editorial Trópico, 1936. Pp. 261. \$1.00.)

The recently-founded Editorial Trópico of La Habana initiates its series of Cuban biographies with this study by Carlos Márquez Sterling of Ignacio Agramonte, the outstanding figure from the military point of view of the Ten Years War.

The author confesses in his preface that he is inspired in his treatment of Agramonte by the biographical standards of Emil Ludwig, with emphasis on the atmosphere and emotion of the epoch as well as the bald exposition of the facts. After some digression on the possibilities of dealing artistically and historically at the same time with a given personage, Márquez Sterling engages himself in the task of recreating the Cuba after 1868, with attention to the remarkable military achievements of Ignacio Agramonte. As is quite natural, there is often difficulty in maintaining the hero isolated from other figures of importance who appeared during the *melée* that distinguished Cuba from the Grito de Yara to the Peace of Zanjón. There are no references as to sources, no footnotes, and even quotations are left unlocalized. The bibliography includes numerous newspaper articles, some monographs and memoirs and many of the standard works on Cuban history in the nineteenth century. Unfortunately, here too there appears a certain slovenliness in that dates and places of publication are scrupulously omitted.

That the figure of Ignacio Agramonte is well worth the attention of the historian and the biographer admits of no doubt. Certainly, he forms one of the distinguished members of that galaxy of Cuban personalities which must include Narciso López, Calixto García, Máximo Gómez, and Antonio Maceo. The biography opens with a description of the Camagüey of 1841 when Ignacio Agramonte was born. Agramonte lived at a time when Cuba was convulsed by civil strife. He was born at a time when the negro Plácido was executed for alleged conspiracy and was a mere lad when Narciso López undertook the invasion of Cárdenas. During his student days in La Habana, he experienced the wrath of the captain general, José Gutiérrez de la Concha, and the constantly repeated suppression of rebellion or alleged rebellion. His character was molded and determined in this charged atmosphere of Cuba in the mid nineteenth century. From his university days, affirms Márquez Sterling, Agramonte was prompted to revolution. His intellectual capacity overshadowed at this time his potential military prowess. In Camagüey, he was among the first who vowed to take up arms at the first favorable moment. With some precipitation, Carlos Manuel de Céspedes launched the famous Ten Years War by proclaiming the independence of Cuba at Yara in October of 1868. Agramonte, taken by surprise, uninformed of the details of the plot which was developing, saw no other route

but that of revolt. It would be tiresome to recount the vicissitudes of Ignacio Agramonte during the deliberations which led to the formation of the republic under Céspedes, the friction between the two and the multiple difficulties in the way of carrying on the war. The life of Agramonte in those troubled times was a constant and endless series of skirmishes, minor engagement, ambushes, and attempts to hold together the tiny Cuban force. During the critical years of 1869 and 1870, Agramonte operated with extraordinary brilliance in Camagüey province, with sporadic attempts to join with Máximo Gómez in Oriente. The military skill, exceptional daring, and fortitude of Agramonte is evident in every page of this moving biography. Márquez Sterling has given us an excellently written, extremely human, and quite unforgettable story in these pages.

The Editorial Trópico under the direction of Emeterio Santovenia is undertaking to issue new works and reprints of strictly Cuban interest. This biography of Agramonte is the first in its series. Volume I of the *Obras Completas* of José Martí is announced as in press.

RICHARD PATTEE.

University of Puerto Rico.

Gómez, Tyrant of the Andes. By THOMAS ROURKE. (New York: William Morrow and Company, 1936. Pp. xvi, 320. \$2.00.)

Students and historians of Hispanic America would welcome an accurate and authentic account of Juan Vicente Gómez and his dictatorship in Venezuela (1908-1935), but it will probably be many years before such an account can be written. Reliable evidence is difficult to obtain, the truth almost impossible to establish. When all the world is ruled by dictators, contemporary history will cease to be written. All the biographies will then be eulogies or diatribes.

Mr. Rourke's work leaves much to be desired. His bibliography is far too scanty: he appears not to have realized that the laws of Venezuela are in print, as well as many of the official documents of the Gómez period. Moreover, he lacks that cool and critical judgment demanded by the historian; at times he hardly weighs his evidence at all. He even errs with respect to important dates which he might have verified from the laws and resolutions of the Venezuelan Congress or by examination of the public monuments. For instance: May 23, 1899, the date when Castro and Gómez began their successful revolution, is a notable date in Venezuelan history, but Rourke writes

May 13 instead; October 22, 1899, the day when the forces of Castro took Caracas, is another well-established date, yet the author has it October 26; still another significant date is December 19, 1908, the day on which Gómez assumed the government in his own name, but Rourke writes December 20; and the date of Venezuela's declaration of independence is given as July 14, not July 5! He also says that Castro lived until 1928, although a mere glance at the index of the *New York Times* would have convinced him that the dictator expired in December, 1924; and the author reveals a very limited knowledge of the Venezuelan Crisis of 1902-1903, which has been fully discussed by half a dozen reputable historians. Such errors and shortcomings convict the writer of carelessness and tend to destroy the reader's confidence.

With all of its defects, however, this biography is worth reading. The story of Gómez's career is preceded by a brief summary of Venezuelan history. Many of the facts presented are probably reliable, and the narrative is interesting throughout. A thorough account of the "Tyrant of the Andes" could not have been written without careful and extensive investigation, a task requiring more time and patience than the author had at his disposal, for the publishers were doubtless in great haste to satisfy the curiosity of the gentle reader.

Although advice from this reviewer has not been requested, he ventures to suggest to the publishers that they place a consulting historian on their staff. A small fee might have improved the quality and even the sale of this work. In fact, sound advice might have been had gratis, as was the case in 1930 when Hildegarde Angell's excellent biography of Bolívar was issued.

J. FRED RIPPY.

University of Chicago.

Historia de la República del Ecuador. Vol. I (1822-1861). By J. L. R. (Quito: Editorial Ecuatoriana, 1935. Pp. 655.)

The initials J. L. R. conceal the identity of the excellent historian of Ecuador, Father José Le Gouhir y Rodas of the Society of Jesus. This volume is a completely revised edition of the one issued in 1921 and can be considered in reality a new piece of work. Father Le Gouhir is a Frenchman, a resident of Quito for over forty years, and one of the most painstaking and careful students of the republican history of Ecuador. This volume fits in with the second already is-

sued in 1925 and constitutes the first of what is to be a three volume study of Ecuador from 1822 to 1900.

Outside of a few textbooks such as those of Oscar Efren Reyes, Quevedo, and others, there is nothing of a detailed nature touching on the evolution of the republican institutions in Ecuador. There are, of course, numerous monographs, but practically nothing which suggests the continuity of national history. The proof of how badly needed such a work is in Ecuador itself, is the fact that the edition was exhausted almost upon publication. Criticism in Ecuador has, quite naturally, been divided, depending largely on the tendency of the critic. Since the work is from the pen of a Jesuit, the "liberal" element has seen in it an effort to justify traditionalism and exalt the virtues of the great Ecuadorean Gabriel García Moreno. The second volume embraces this period, however, and consideration for the moment must be restricted to the first which prepares the way for the beginning of the Garcían régime in 1861.

The very extent of the work makes for almost excessive detail at times. While organized under frequent subheads to facilitate comprehension, there is still such an abundance of detail and such a profusion of names and dates as to mystify occasionally. This is especially true of certain periods of Ecuadorean history which literally defy the historical student seeking some degree of lucidity and clarity regarding them. An example is the chaotic epoch from 1858 to 1860, that is, from the outbreak of the civil war against Robles and Urvina, until the definite establishment of the government under García Moreno. Few writers have undertaken successfully to carry through the chronology of this short span of years and leave a clear impression. Father Le Gouhir does so quite successfully and he is to be congratulated on including frequent chronologies of dates with indications of the sequence of events.

The divisions of the work follow the broad historical lines into which nineteenth century Ecuador falls. The opening division treats of the period of eight years during which Ecuador formed part of Greater Colombia. Here, too, there is likely to develop a certain confusion in the reader's mind unless absolute clarity is maintained. The trend of the discussion is toward an explanation of the final break between Ecuador and the north. Attention is paid to the Bolívar-Santander controversy, the division of opinion between the two leaders, the influence of Juan José Flores, a devoted Bolivarian, on the creation of

independent Ecuador, and finally the war which broke out between Colombia and Peru in 1828 and intensified the antagonism between these two countries. All of this had a direct effect on Ecuador. The war with Peru left a bitter heritage which is evident even yet. There is the question of the boundary, the constant friction over the Oriente territory, and especially the tendency of Peruvian presidents to intervene in Ecuadorean affairs, as witness, Lamar, Castilla, and others.

Apparently isolated events are brought together to demonstrate the logic of the separation of Ecuador. The decline in popularity of the Liberator in the north, the assassination of Sucre, and the negligence and general decadence in which the provinces of Quito, Azuay, and Guayaquil in the south found themselves. General Flores acted as the spokesman of a public sentiment already fast developing and the decision of 1830 to create an autonomous state was the work of eight years of growing dissatisfaction. Hence the erection of independent Ecuador.

From 1830 to 1845, the dominant figure in Ecuadorean life was undoubtedly Juan José Flores. The Venezuelan president of Ecuador plays a rôle so all absorbing as to leave little room for other actors. The only exception is Vicente Rocafuerte. Father Le Gouhir places less emphasis than is usual on the *caudillismo* and foreign militarism generally attributed to Flores. To be sure, militarism was rampant. Ecuador had served as the crossroads of military movements during the conflict of emancipation. Colombian troops still remained in the national territory; the first president was a military man raised in the school of the wars of independence. It was inevitable that the new republic should suffer the hazards and the havoc of an uncontrolled soldiery. One of the most curious chapters of Ecuadorean history is the short administration of Rocafuerte, short in space of time, but transcendental in character and significance. Rocafuerte was the creation of Flores, in the sense that the latter raised him to the presidency. Ecuadorean historians are far from arriving at a satisfactory solution of the problem of why Vicente Rocafuerte, captured in flagrant rebellion against Flores in 1834, should accept the terms offered by the then president and become his staunchest supporter. Suffice it to say that Rocafuerte in this *volte face* paved the way to the presidency.

It is interesting to note how Father Le Gouhir treats this outstanding liberal. Rocafuerte has been accused of demagoguery, masonry, free thought, and anticlericalism. The picture given us by Father Le

Gouhir is of a man of mighty passions and feelings, swayed by the sentiments of his time which were strongly republican and somewhat anticlerical. Rocafuerte had been educated in France, had served Mexico as a diplomat, and was thoroughly familiar with the thought and tendencies of his day. His antagonism to the Church, once in the presidency, was more vocal than real. His administration displays no deep rancor and no violent antipathy. He was responsible for the creation of the diocese of Guayaquil, and was an earnest and vigorous advocate of the purification of the clergy. Father Le Gouhir considers Rocafuerte as the predecessor of García Moreno—the fore-runner of the other remarkable figure which Ecuador produced in the past century. Rocafuerte was distinguished by an almost ruthless dedication to progress and reform. His monetary program, his proposals for education, and his effort to raise the economic standards of Ecuador all bear the imprint of a mentality very close to that of García Moreno. Rocafuerte employed the same violent methods which distinguished the later executive. Flores returned to power for a second term which was to end with the revolution of March 6, 1845, and his definite collapse.

The third part of the book is termed the *Período marcista*, that is to say, the March revolution and the aftermath. Here are a series of lesser luminaries in the direction of affairs—Roca, Ascásubi, and Noboa. Ecuadorean life was unsteady during these years from 1845 to 1855. Foreign militarism has been curbed, to be sure, largely through the civilian administration of Rocafuerte. But a worse enemy was to arise—national militarism. With this institution are associated the names of José María Urvina and Francisco Robles.

These are dreary years during which Urvina ruled and placed in power his underling Robles as successor. The abolition of slavery constitutes the sole achievement of merit in the Urvina régime. The way was prepared for the violent outbreak of 1858 and the collapse of Ecuador into unbridled anarchy. Father Le Gouhir treats, as already mentioned, this period with care and prudence. The characteristics of these years are faction against faction, rival governments against rival governments, and a vast galaxy of battling figures, chief among them Franco, Urvina, García Moreno, and Flores. Little by little, the person of García Moreno emerges. These three years are the turning point of his career. As head of the provisional government he directs the war for the administration set up in Quito. With a rapidity that

is almost dazzling, he moves from Quito to Guayaquil, to Paita, to Lima. The fall of Guayaquil before the arms of García Moreno and Flores puts an end to this devastating anarchy. The story as Father Le Gouhir proposes to tell it ends with the taking of Guayaquil. The third period of Ecuadorean republican history is over and the fifteen years of domination by García Moreno about to begin. The second volume takes up the tale at this point.

Father Le Gouhir's style is not too facile and the work is distinctly for the scholar rather than the casual reader. There is nothing like it in existence for a knowledge of Ecuador and it is in point of accuracy superior to Cevallos. While we are to expect a strong conservative bias and a feeling of clericalism, the book should not be judged as a brief for the clerical party. The critical factor is ever present and lends seriousness and scholarship to what is a really magnificent piece of work.

RICHARD PATTEE.

University of Puerto Rico.

Handbook of Latin American Studies. A Guide to the Material published in 1935 on Anthropology, Archaeology, Economics, Geography, History, Law, and Literature. By a number of scholars. Edited by LEWIS HANKE, Ph.D., Instructor in History, Harvard University. (Cambridge: Harvard University Press, 1936. Pp. xviii, 250.)

Such a book as this has long been needed, and it is to be hoped that it can be made an annual publication supported, as this one is, by the Social Science Research Council or by some other organization. What a pity it is that some university does not take the project completely under its control and place it on a firm financial footing so that the admirable plans of the committee can be carried out.

As a guide, this volume aims to furnish a convenient list of scholarly works by and for specialists in the broad field of Hispanic American civilization. Yet, despite this all inclusive aim, there are no sections on the sciences, sociology, religion, the fine arts, and educational affairs, although some items in these classes are listed under other titles. The omission of such headings narrows considerably the value of the work.

The *Guide* is divided into several sections, the first being entitled "General" (3 pages), which contains bibliographical works and

"Other Works", perhaps better described as "miscellaneous" because of their varied nature. The second section (pp. 5-22) is entitled "Anthropology and Archaeology", the first portion of which is written by Alfred M. Tozzer and the second portion by Robert Redfield. Unfortunately, only Middle America is treated here, while Brazilian anthropology is to be found in the history section and other South American anthropology and archaeology are omitted.

The third section deals with Economics (pp. 23-53). The Caribbean Area (called elsewhere "Middle America" and "Middle America and the Islands") is by Chester Lloyd Jones, while South America (except Venezuela and Colombia) are by D. M. Phelps. A section on Geography comes next (pp. 54-78) by Clarence F. Jones and Preston James. An important contribution in this section is on the Cartography of Latin America by Raye R. Platt.

The section on History (pp. 79-148) is the longest and most satisfactory. Professor Aiton treats Colonial Spanish America, Professor William Spence Robertson lists references in the Revolutionary Period, Professor Charles W. Hackett deals with the National Period for the Caribbean Area, and Professor C. H. Haring treats the National Period for Spanish South America. Professor P. A. Martin has compiled the material for Brazil covering the period from colonial times to the present.

Law (pp. 149-189) is compiled by John T. Vance and includes references on international law and relations. This section also contains a valuable "Tentative Guide to Latin American Legal Periodicals and Serials published in 1935". The next section deals with Literature (pp. 190-218). Professor Irving A. Leonard has listed references on Spanish American colonial literature, Professor Sturgis Leavitt, on Spanish American literature of the National Period, and Professor Samuel Putnam, on Brazilian Literature.

Each of the large sections contains a brief essay surveying the fields under discussion and often indicating research plans in progress. At the beginning of the volume is a helpful analytical table of contents, while at the end of the book is an excellent index of names. Preceding the index are a list of abbreviations and several essays: "A Tentative Guide to Manuscript Material in Latin American Archives and Libraries" by Henry A. Grubbs; "The Boggs Bibliography at the University of North Carolina" by Sturgis Leavitt; "The Colonial Archives of Guatemala" by Lesley Byrd Simpson; "The

Institute of Jesuit History of Loyola University, Chicago'' by W. Eugene Shiels; and ''The Brazilian Race Study carried on by Donald Pierson of the University of Chicago''. It is the plan of the editor and the committee to add to this type of essay in future volumes.

In a study such as this is, there is of necessity some overlapping of subject matter, but duplication of titles has been reduced to a satisfactory minimum. Perhaps in subsequent volumes the arrangement of subject matter could be made more logical if no attempt were made to attach names of compilers to items or sections. The present arrangement seems somewhat artificial and even awkward at certain points. On the whole, however, this *Guide* constitutes an admirable beginning of what should prove one of the most helpful series of aids for students of Hispanic American affairs.

Perhaps in conclusion the reviewer may be allowed to make one suggestion which he has long had in mind and which the appearance of this book further emphasizes the need for, namely a bio-bibliographical periodical in which abstracts of all important books, pamphlets, and articles may be printed. *Social Science Abstracts* supplied this need in part, but its untimely death simply served to make more prominent the need for such a magazine in the field of Hispanic American affairs. Meantime, until such a publication can be commenced, subsequent editions of this *Guide* might well furnish abstracts of the most important items which it lists.

A. CURTIS WILGUS.

Washington, D. C.

Impresos Mexicanos del Siglo XVI (Incunables Americanos) . . . Estudio Bibliográfico precedido de una Introducción sobre los Orígenes de la Imprenta en América. By EMILIO VALTON. (Mexico: Imprenta Universitaria, 1935. Pp. xxxii, 247. Plates. Regular ed. published at \$5.50; de luxe ed. at \$12.50.)

A volume such as this cannot receive proper treatment at the hands of a reviewer for it has to be examined to be fully appreciated. Nevertheless, some idea of its immense value can be indicated here. The book is presented by the National Library of Mexico in connection with the celebration of the fourth century of the introduction of printing in Mexico, and it, indeed, constitutes a fitting memorial to that great event, for it not only synthesizes knowledge about early

printing in Mexico for the first time, but it assembles some hitherto unknown facts about the early printers of the country.

To begin with, Dr. Valton draws a parallel between the incunabula of Europe in the fifteenth century and the *incunables americanos*, printed matter of sixteenth century Mexico (and Peru). He says (p. XIV):

De una manera análoga, los impresos mexicanos del siglo XVI—y en el mismo caso están los primeros impresos del Perú—merecen ser llamados “incunables americanos”, por haber sido dados a la estampa cuando el arte tipográfico en el Nuevo Mundo se encontraba en sus albores, es decir durante el primer período, después de la introducción de la imprenta en América, comprendido entre el año 1539, en que Juan Pablos imprimió en México la Breve y más compendiosa Doctrina christiana—primer libro de América que se conoce hasta ahora—y el año 1600, que marca la conclusión del referido período.

Dr. Valton has divided his work into two parts, the first of which is the Introducción entitled “Los orígenes de la imprenta en América”. This is composed of Part I “Período hipotético y preparatorio . . .” and Part II “Período histórico y definitivo. . .” In many respects this portion of the volume is of greatest importance for it deals critically and carefully with the problem of the first publication date. The remaining portion of the book (pp. 21-229) is entitled “Estudio Bibliográfico”. This is divided (pp. 21-29) into “Preliminares” dealing with the Cromberger Family and especially with Juan Cromberger, “introducción de la imprenta formal en México”; and into a larger section (pp. 37-229) entitled “Los primeros impresores de América”, which contains a series of bio-bibliographical essays on the printers of sixteenth-century Mexico written with great care and thoroughness and treating in detail the works which each published.

Unlike most books published in Hispanic America, this contains an analytical table of contents (Índice analítico) at the beginning of the volume, while at the end of the book are an alphabetical index of names and an index of illustrations, together with a general index. The plates include facsimiles of title pages, examples of manuscript and printed pages, and signatures.

This volume leaves a very favorable impression. It has been long needed, and it forms an admirable introduction for a contemplated work which it is hoped will appear by 1939 at the latest—the *Bibliografía americana del siglo XVI*.

A. CURTIS WILGUS.

Washington, D. C.

The first social Experiments in America. By LEWIS HANKE. (Cambridge: Harvard University Press, 1935. Pp. xii, [4], 99. Bibliography; index. \$1.00.)

The subtitle of this excellently named essay is "A study in the Development of Spanish Indian Policy in the sixteenth Century"; and the resulting product is worthy such a title. The essay, which is No. V of "Harvard Historical Monographs" now being "published under the direction of the Department of History from the income of the Robert Louis Stroock Fund", is thoughtful throughout and well sustained. Economists, political scientists, and sociologists, as well as historians, will find it useful. In it, Mr. Hanke shows—following the titles of his chapters—the theoretical problems created by the Spanish conquest in the Indies; the Spanish concept of the Indian; the Jeronymite interrogatory; the experiments of Rodrigo de Figueroa; and the "experiencia" in Cuba. The materials are drawn for the most part from manuscripts in the Archivo de Indias—it is hoped that the originals of these will survive the present fratricidal war. The evidence adduced from the manuscripts show quite clearly that recklessness, carelessness, ignorance, and thoughtfulness went hand in hand in the new colonies. The concept of the Indian during the pioneering stage in the United States was in much the counterpart of that of the early Spaniards; although there was very little realization in the United States, or in the English colonies before 1776, that the Indians had any good qualities or were worth saving. With all the cruelty of the Spanish conquest, there was an earnest inquiry on the nature of the Indian, which resulted in the great mission movement. This, notwithstanding its inconsistencies, its political ramifications because of the union of Church and State, and other discouraging factors, is perhaps, the greatest of Spain's glories in the New World. In Spain, the capacity of the Indian for liberty was discussed avidly, and was answered in the negative, because of his nature prone to break away from any restraint (even that for his own good); but the answer was partly the result of selfish economic reasoning. All of this is brought out in this little essay. The volume is a very creditable attempt to show the reaction in men's minds in the sixteenth century toward the Indian. He presented a very definite and real problem. Las Casas fought valiantly for the Indian, although as Mr. Hanke shows in another essay,¹ he contributed

¹"Dos Palabras on Antonio de Ulloa and the *Noticias Secretas*", in this REVIEW, XVI. (November, 1936), 479-514.

largely to the *Leyenda Negra* from which Spain is still suffering. The North American counterpart to Las Casas is of course John Elliot, who also made a gallant effort to lead men to consider the human side of the Indian. This volume is a good guidepost to Spain's first reactions concerning the native peoples of the Spanish Indies. Other monographs of this general nature need to be written.

JAMES A. ROBERTSON.

NOTES AND COMMENT

A BIOGRAPHY OF JOAQUIM NABUCO

Students of Brazilian history not fortunate enough to have access to the comparatively rare 1896 edition of Joaquim Nabuco's life of his father, Councillor Nabuco de Araujo, one of the eminent figures of the court of the second emperor, will welcome the two large volumes just off the press of the Companhia Editora Nacional, São Paulo. This publication is a revision by Minister Mauricio Nabuco, of the Brazilian Foreign Service, of his father's monumental biography of the former's grandfather, *Um Estadista do Imperio, Nabuco de Araujo, sua Vida, suas Opiniões, sua Época*.

Joaquim Nabuco came to Washington during the administration of President Theodore Roosevelt as Brazil's first envoy to hold ambassadorial rank. He was already known in South America as one of the leaders of the abolition movement in Brazil and abroad as a skilful diplomat. He soon endeared himself to Americans and with Elihu Root worked untiringly to promote Pan Americanism. Like many Brazilians he was an eloquent speaker and gave a series of brilliant addresses before university and other assemblages during his stay in this country. He died in 1910 while still serving his country at Washington.

Americans recognized in him the very flower of Hispanic American gentility and culture, while in his own country he was famed for his versatile writings. He seemed equally at home in history, belles lettres, art criticism, philosophy, and sociology. His outstanding work is *Um Estadista do Imperio*, recognized in Brazil as the most complete study in existence of the policy and administration of the monarchy. Not only did the elder Nabuco play a notable rôle in the affairs of the court of Dom Pedro II., but he saved every morsel of material relative to his long career either as minister, senator, member of the council of state, or holder of other administrative posts.

This collection of data that represented more than forty years of active participation in governmental affairs, the son went over carefully in 1894 and 1895 and then wrote the three volumes that he modestly described in the preface as merely a contribution to the

epochal biography of Dom Pedro that would one day be written. His life of his father, he declared, presented only a partial picture of the great era, the center of which must always be the emperor himself.

But Joaquim Nabuco anticipated a great deal of the work of this future imperial biographer and *Um Estadista do Imperio* has been a treasure trove for all interested in nineteenth century Brazilian history. Brilliant and revealing sketches and appraisals of the imperial statesmen afford information difficult to find elsewhere.

The author was never satisfied with his work and before his death made many alterations in the manuscript which have now been given to the publishers by his heirs. The revision is in many respects a new work, and is liberally annotated, both with contributions from the pen of Joaquim Nabuco himself, taken from his revised manuscript, and those of the editor Mauricio Nabuco.

For the sake of clarity the holders of titles under the empire are designated by their titles, instead of by their original names, as was the case in the first edition. The new work also includes a helpful reference list of all the imperial cabinets from 1837 to 1878.

The Nabuco's appear to write biography easily. In 1929 the same publishers issued a life of Joaquim Nabuco by his daughter, Senhorina Carolina Nabuco,¹ now a leader in advancing feminism and education in Brazil. This work is being translated by the Argentine ambassador in Brazil, Señor Ramón Cárcano, as the first of a series of popular editions of Brazilian books to promote cultural relations between the two republics. Senhorina Nabuco's work is also being translated into English.

FREDERIC WILLIAM GANZERT.

University of Utah.

BERNAL DIAZ DEL CASTILLO, ENCOMENDERO

The relationship of the encomendero of the Indies to his Indian protégés has been studied heretofore mainly from two sources, the laws of the Indies and the controversial matter contributed usually by ecclesiastics. Defenders of the encomienda, on the other hand, such as Ginés de Sepúlveda and Bernardo de Vargas Machuca, with their historical and legalistic approach, make sad reading. Therefore, from Bartolomé de las Casas down to Sir Arthur Helps, the

¹ *A Vida de Joaquim Nabuco, por sua Filha Carolina Nabuco* (Sao Paulo, Companhia Editora Nacional, 1929).

conquistador has taken a fearful beating where his treatment of the Indians was concerned. The royal cédulas, which created the *encomienda*, attempted to make of the conquistador a guardian of the Indians and a sort of lay missionary—a responsibility which he was little fitted to assume—and it should cause no surprise to learn that he took his spiritual obligations lightly. And yet I find it difficult completely to swallow the image of the scowling monster, whip in hand, so fiercely denounced by interested ecclesiastics and so ably painted by Diego Rivera. The long centuries of comparative peace and increase under the Spanish colonial régime must mean that the relationship of the conquistadores and their descendants with the Indian elements was generally cordial. Let me hasten to add that it is not my purpose to defend the military parasitism represented by the *encomenderos*. Indeed, the record of the early years, during which they sought to enrich themselves by imposing crushing tributes on the Indians, is sufficiently bad to justify the temptation to mount one's moral high horse and have a tilt at them. I wish here only to offer an exception to the general notion of the character of the *encomendero*—an exception which must have had many parallels.

To go back a bit—in my attempt to discover what the real relationship of the *encomendero* to the Indian was I spent several months in the archives of Mexico examining the voluminous records of the *Juzgado General de Indios*. I began my search with the assurance that numerous complaints against *encomenderos* must have been presented before that remarkable tribunal, which operated from 1574 to the end of the Spanish régime. I found, indeed, thousands of complaints against Spaniards of every other class, but not a single specific complaint against an *encomendero*. True, the *Juzgado* was established after the reform brought about by the New Laws and such evidence is purely negative. So it would be hazardous to conclude from it that the *encomendero*, after the middle of the sixteenth century, turned into a gentle patriarch, intent on the welfare of his charges. But it does strengthen my growing belief that, after the harsh days of the military conquest, the new parasite class settled rather easily into the fat life of the country squire, and that it is very likely that the conquistador and his descendants (being human) identified themselves with local community life and took some pride in the well-being of their charges. This rôle came the more easily since their interest was identical with that of the Indians upon whose tributes they lived.

Documentation for such a thesis is not easy to procure, for the encomendero was not given to keeping books or to writing memoirs about so prosaic a subject. The one witness I can call at present to my support is none other than Bernal Díaz del Castillo. No one who has read the astonishing *True History of the Conquest of New Spain and Guatemala* will contend that Bernal Díaz, in his sympathies and prejudices, was anything more than a good conquistador (leaving to one side his great narrative gift). He was a brave soldier, but without distinction; a good Catholic, but with no urge toward mysticism or fanaticism; he was perpetually hard up and was not behind his comrades in begging a bonus from an ungrateful sovereign; he was an encomendero, a solid citizen, and *regidor perpetuo* of the noble and loyal city of Santiago de Guatemala. In short, one may search the records in vain for any mark that distinguished Bernal Díaz from his fellows. From the above I am tempted to conclude that his attitude toward the Indians of his encomienda differed in no essential respect from theirs. That he differed violently with those later comers in the matter of exploitation of the Indians is clear, not only in the evidence I shall submit later on, but in a passage of the *True History*. After describing the severe punishment meted out by Cortez to one Fulano de Mora for stealing two chickens from the Indians, Bernal Díaz proceeds to lecture his readers:

He querido traer esto aquí a la memoria para que vean los curiosos lectores, y aun los sacerdotes que agora tienen cargo de administrar los santos sacramentos y doctrina a los naturales destas partes, que porque aquel soldado tomó dos gallinas en pueblo de paz aina le costara la vida, y para que vean agora de qué manera se han de haber con los indios e no tomalles sus haciendas.¹

Bernal Díaz was encomendero of several communities in Guatemala: Tepeaco, Guanagazapa, and Hueymango, in Izcuintepec (modern Escuintla), and some territory in Sacatepéquez. In January, 1579, a certain Martín Ximénez, who described himself as an *hombre del campo*, applied to the audiencia for a grant of six *caballerías* of land in Izcuintepec, within the boundaries of the pueblo of Guanagazapa and in the encomienda of Bernal Díaz. The president of the audiencia, García de Valverde, commissioned one Juan de Morales, receptor of the audencia, to examine the land in question. Morales, after what seems to have been a perfunctory examination, recom-

¹ *Verdadera y notable Relación del Descubrimiento y Conquista de la Nueva España y Guatemala*, I. 94 (2 vols. Guatemala, 1933). (Italics mine.)

mended that the grant be allowed. The whole business was done so hastily and the witnesses called were so unanimous in their approval that it has the air of connivance of some sort. At any rate, the audiencia made the grant over the protests of the Indians and the latter filed suit for recovery, appealing to Bernal Díaz to represent them before the audiencia. The suit dragged on for two years and was finally decided for the Indians. It will be examined in some detail, as it shows rather definitely the economic and sentimental tie-up between Bernal Díaz and the Indians of his encomienda.

The lands which Ximénez coveted and which he humorously described as *tierra estéril y de ningund prouecho* lay along the Michatoya River. Morales arrived there, hired two interpreters, one for *populuco* and the other for *mexicano*, appointed an attorney for the Indians, and gave the latter two days in which to make any protest. The first suspicious note was sounded by the attorney for the Indians, one Francisco Cuello, mestizo. In a letter to the audiencia of January 26 he protested against the haste with which Morales was proceeding and stated that the proper Indian officers of Guanagazapa were all in jail in the capital, and that he, moreover, was not a properly qualified attorney for the Indians, as he knew no law and could neither read nor write. The Indians themselves filed a protest with the audiencia, claiming that the land in question was necessary for their maintenance and that Morales had not given them time to testify in their own defence. Here follow many folios of charges and counter-charges, protests, and accusations, all mutually contradictory, which leave the reader in as grave a state of perplexity as they must have left the audiencia. Bernal Díaz came into the litigation (he was then about eighty-six) with a letter to the president of the audiencia, March 12, 1579. Since it contains practically all the arguments which he later repeated many times, I shall quote it at some length.

Most Illustrious Lord: I, Bernal Díaz del Castillo, citizen and regidor of this city and encomendero of the pueblo of Guanagazapa . . . say that it has come to my notice that some days past a certain Martín Ximénez (who is in partnership with a priest called the Bachelor Antonio López) presented a petition to your Lordship in which he begs a grant of six caballerías of land within the boundaries of the said pueblo of Guanagazapa. Your Lordship ordered an investigation made and an escribano named Juan de Morales went, and the Indians of the said pueblo protested it, because truly the lands which he begs are where the Indians have their fields of maize, cacao, peppers, and other vegetables, and they are the navel of the best lands of their ancient holdings, and they need them. And, because the Indians protested, the said Morales threatened that if

they did not give them up he would throw them into jail. And now I am told that yesterday, Monday, the said Ximénez made a petition demanding the said lands and that your lordship has ordered the priest who has charge of the pueblo to give his opinion.

To this I reply and swear that if the said lands were [could be granted] without harm to the Indians I myself should have asked the former governors for them for my six legitimate sons. But, as I have said, these lands are where the Indians have their fields of maize, peppers, and cacao, *from which they pay their tribute*, and it is their ancient holding, and that is why I have not asked for them, because it would mean the destruction of the Indians. . . .

I beg and supplicate your Lordship not to give the said lands to any one, because I understand that the one who is behind all this is the said Bachelor Antonio López, priest, and because the Indians, and I, as their encomendero, have not been heard. Otherwise, they will be destroyed and I shall receive great injury and loss. And if your Lordship hears through evil falsifiers that the lands can be granted without damage and that your Lordship can give them (I know truly that you will not give them, because it would do great harm to the Indians), I beg that out of regard for the notable services I have rendered his Majesty and all Christendom, if you do make a grant of the said lands to any one, you will grant them to my six legitimate sons, for his Majesty has ordered that we are to be preferred. And so now, in the name of my said sons, I protest [the grant of] the said lands, [and beg that] they either remain in the possession of the Indians, their owners, or that they be granted to my sons. . . .

(signed) Bernal Díaz del Castillo.

Guatemala, March 12, 1579.*

On the following day five of the old conquistador's legitimate sons filed a petition for the lands in their own name. It is signed by Bartolomé Becerra, Mateo Díaz, Pedro del Castillo, Juan Becerra, and Gerónimo del Castillo, the sixth legitimate son, Francisco Díaz del Castillo, being absent.

There is a hiatus of eight months in the record of the suit until December 12, 1579, when the president issued an order of *ruego y encargo* to Rodrigo de Acosta, the parish priest of Guanagazapa, to ascertain if *two* (possibly a scribal error) caballerías of land could be granted to Martín Ximénez without damage to the Indians. The priest promptly replied that *six* or even more caballerías could be granted without injury.

* This letter and all the material cited below have been drawn from the Archivo Colonial de Guatemala, from a portfolio labeled "Autos de Martín Ximenez estante en esta corte sobre las quatro cauallerias de tierra que pide en terminos del pueblo de Yzquitepeque, las quales tienen contradichas Francisco de Valverde e los yndios de los pueblos de Huanagaçapa e los de Huemango". (55 ff. Italics mine.)

The month of January saw no less than five petitions and protests by Bernal Díaz and his Indians against the grant. The only new matter they contain is the charge that all the witnesses called by Juan de Morales were intimate friends of Ximénez and that Acosta was unfriendly to the Indians of his parish, who were suing to have him removed for extortion and for his ignorance of their language.

On February 13, 1580, the Indians of Guanagazapa gave Bernal Díaz a power of attorney to represent them in their suit for the recovery of their lands. On the twenty-third they filed another protest, the gist of which was that they needed the land because they had to move their milpas every two years on account of the heat and because their land "got tired". They denied Ximénez's statement to the effect that they were so few in number that they did not need the land, saying that when they were first given to their encomendero they numbered only twenty families, *but now they numbered eighty families*. Moreover, they were not bringing this suit at the behest of their encomendero, as charged; indeed, they had contested the grant from the beginning.

And if our encomendero helps us, and his sons the same, it is right and what his Majesty commands, and if the lands are to be given to any one they should be given to our encomendero and to his sons, who will look after us and do us no injury.

The blunt hand of the old conquistador seems all too apparent in this last sentence. Osorio, the attorney for Ximénez, denied *in toto* the allegations of the Indians (March 1); he begged more time in which to gather evidence (May 6); he presented his *probanza* (June 16). Bernal Díaz swung into action with three petitions (July 1, 8, and 28) in which he blasted in turn all the allegations of his opponent, adding that Ximénez wanted the land for an indigo factory and that, moreover, Ximénez was a vagabond without property and therefore entitled to no consideration.

Osorio made the expected rebuttal on August 12, and the concluding argument was made on August 18 by Bernal Díaz in a long letter to the president. He reviewed the whole history of the case again, adding little with which we are not already familiar, repeating that Ximénez wanted the lands for an indigo factory and was acting merely as the agent for one Alonso Ramírez de Vargas. Says Bernal Díaz:

Besides, the great damage and pestilence which come from the odor of indigo are well known, and Indians have died and are dying from it, which your Highness should command to cease. And as to what he says about the Indians not yet having received any damage from it up to the present, I say that we beg restitution of the lands before they suffer it. . . . And as to what he says about my defending the Indians and about my not wishing any Spaniards to enter among the Indians of my encomienda, I say it is false and contrary to the truth, because it is well known that in Sacatepéquez most of the wheat fields of the Spaniards are on the lands of my encomienda. . . . Your Highness should not permit these lands to be taken from the Indians and given to a vagabond, for they are a pueblo of more than three hundred persons. . . .

The record of the suit ends with the laconic statement, signed by three members of the audiencia on August 31, 1580, that the lands have been restored and that the parties are given twenty days in which to file probanzas.

To sum up: the suit shows clearly the identity of interest of Bernal Díaz and the Indians of his encomienda, for any diminution of their revenue producing lands meant a corresponding loss to him; it also shows that the Indians regarded him as their natural protector and that he regarded himself in the same light. It shows, moreover, that the audiencia concurred in his opinion and, by reversing its original stand, regarded his argument as generally valid. I might add, by way of postscript, that had it not been for the stout fight put up by Bernal Díaz the Indians would assuredly have lost their lands.

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HISTORICAL ACTIVITIES IN PANAMA

On May 29, 1935, the University of Panama was formally established and solemnly inaugurated the following October. It thus became the youngest Hispanic American university. Under the active guidance of the first rector, Dr. Octavio Méndez Pereira, the new university has undertaken a number of projects of keen interest to students of Hispanic American affairs. Panama was fortunate in obtaining the services under extremely favorable terms of a number of German scholars, living in exile from their homeland. This group of some half dozen persons constitutes the nucleus of the faculty of the National University. Among them are Franz Berkenau in history, formerly of the University of Leipzig; Richard Behrendt, in

Sociology and Economics, formerly connected with the University of Basel; Erich Graetz of the University of Berlin, in Natural Science; Hans Wolff also of Berlin, in Civil and Roman Law; and one or two others. A definite imprint of scholarship and research has been given by these distinguished Germans. The University began, in April of 1936, the publication of a review, entitled *Universidad de Panamá*. Four numbers of this interesting new publication have appeared to date, each including several pertinent studies as well as information on the courses and work of the university. The director of this university journal is Guillermo Méndez Pereira, and the address, Universidad Nacional, Apartado 873, Panamá, R. P. The second year of the Panama summer course was carried through in June and July of this year with great success. Although several persons of note who were expected, among them José Ortega y Gasset, could not fulfil their engagement, the courses were well attended and stimulated the university in seeking to create on the Isthmus a center of inter-American research and investigation. Witness to this ambition was the founding of what is known as the *Instituto Americano inter-universitario de Investigaciones* through an agreement signed by the University of Panama and the University of San Marcos in Lima. This understanding was drawn up in October of 1935 and entered into by the rectors of the respective institutions. The purpose is to coördinate investigation in the fields of history, economics, sociology, and allied sciences with the view of facilitating interchange and mutual aid. It is proposed that this same idea be extended to include other Bolivarian countries, as Colombia, Ecuador, and Bolivia. The fact of greatest interest in this agreement is that it was encouraged and sponsored to a certain degree by President Harmodio Arias of Panama, who has displayed a substantial interest in the foundation of the university and its development. The summer courses, as initiated, form one of the chief sources of satisfaction expressed in the annual message President Arias read to the Chamber of Deputies on September 1, 1936.

One of the best known and productive of Panamanian historians is Ernesto J. Castillero. Dr. Castillero devotes himself largely to the national period of Panama history, that is to say, from the separation of Panama in 1903 to the present. He has a number of worthwhile contributions to his credit. He recently published in the form of a brochure, *El Profeta de Panamá y su Gran Traición* (Panamá, Im-

prenta Nacional, 1936, pp. 60). This study treats of the Panama Canal treaty and the rôle of Philippe Bunau Varilla in its writing and approval. The question of the influence of the French engineer, Bunau Varilla, in the formation of independent Panama continues to arouse the bitterest controversy in the republic. Much has been written concerning him and his position among the liberators of the isthmus, and probably much more has yet to be revealed. In union with most Panamanian historians, Dr. Castellero minimizes the significance of Bunau Varilla. He is especially concerned with demonstrating that the alleged contribution of the Frenchman of some \$100,000 to the coffers of the separatists is pure fiction and that Bunau Varilla secured the post of first Panamanian representative to Washington through political astuteness rather than material aid to the faction which aspired to separation from Colombia. The study is highly documented with abundant excerpts from the copious correspondence of the period of 1903 when independent Panama was created. The same writer has published very shortly a *Galería de los Presidentes de Panamá*, with brief sketches of those who have occupied the presidency of the republic.

There has been announced in Panama the publication within a month or two of a general history of Hispanic America from the pen of Dr. Octavio Méndez Pereira. The title is to be *Historia de Ibero-América*. The purpose is to give in a broad way the development of Hispanic America. The book is destined as a text for Panamanian schools. There is a considerable effort in Panama to create national textbooks for use in the system of public instruction. Witness to this is the *Historia del Comercio* of Ernesto Castellero published some years ago and to appear shortly in a second edition. This outline of the economic history of mankind places emphasis on the importance and rôle of the interoceanic canal on commercial endeavor.

The Academia Panameña de la Historia, consisting of eighteen members, publishes a regular bulletin with important monographs on phases of isthmian history. In the issue for October, 1935 (No. 9) there is an interesting monograph by Samuel Lewis, entitled, *El Convento de los Agustinos Recoletos en Panamá la Vieja*. Samuel Lewis is perhaps the best qualified historian in Panama on the colonial period and has published numerous studies on the foundation and development of Old Panama.

The National Archives of Panama are in process of organization.

Equipped with excellent quarters and under the direction of Juan Antonio Susto, the archival material of the republic is to be housed and catalogued for effective reference. Dr. Susto, as director of the archives, spent seven years in Seville for the purpose of obtaining source materials for the history of Panama. The president elect of the Republic, Dr. Juan Demostenes Arosemena, is a member of the Academy of History and keenly interested in the wellbeing and progress of historical research. It is hoped that official aid will be constant during the four year term of the new executive.

RICHARD PATTEE.

University of Puerto Rico.

On March 20, 1936, Robert Bontine Cunninghame Graham died in Buenos Aires of pneumonia. He had lived a full life, having been born on May 24, 1852, and his works are well known wherever interest in Hispanic America exists. One of his great admirers, Herbert Faulkner West, whose son looks to Cunninghame Graham as a godfather, has written a most delightful little volume entitled *Don Roberto* (Hanover, N. H.: Privately printed by the author, 1936. Pp. 34). This first and only edition consists of one hundred numbered and signed copies, and it contains a brief sketch of the life and writings of the widely known Scotch parliamentarian, traveler, adventurer, historian, and man of letters. As a bio-bibliographical essay the book is a fitting tribute to its hero's immortal reputation.—A. C. W.

The government of Brazil has recently made a facsimile reproduction of the manuscript of "Geographia historica de Capitania de Minas Geraes", written by José Joaquim da Rocha in the last quarter of the eighteenth century, and now preserved in the library of the Ministry of Foreign Relations at Rio de Janeiro. In 1910, the manuscript was given by the then Brazilian Consul General in Lisbon, Manuel Jacyntho F. da Cunha, to the Brazilian Minister Baron Rio Branco.—JAMES B. CHILDS.

The Institución Hispano-Cubana de Cultura has begun activities again after a lapse of some years during the height of the Machado régime, under the guidance of Dr. Fernando Ortiz. The Institución

possesses at the moment some two thousand paying members with the project in the near future of an increase and of the erection of a building suitable for its work. A series of notable lectures has distinguished the labor of the Institución in recent months. Outstanding among visiting lecturers have been Jorge Mañach, now connected with the Instituto de las Españas in New York, Amanda Labarca, Chilean educator, and León Felipe Camino, Spanish poet and writer.—R. P.

BIBLIOGRAPHICAL SECTION

RECENT CONTRIBUTIONS TO HISPANIC AMERICAN BIBLIOGRAPHY

The titles that follow form the sixth supplement to the compilation *Hispanic American Bibliographies*, published by the HISPANIC AMERICAN HISTORICAL REVIEW in 1922.

During the period covered the Harvard Council on Hispano-American studies has, with the titles noted herein, about brought to completion its heavy task of preparing the valuable series of Bibliographies of Spanish-American literature. And while recognizing the tentative character of these lists, students of the cultural aspects and values of the Hispanic American republics will at the same time recognize their debt to the council for having compiled and published in easily available form a bibliographical instrument of such manifest practical usefulness.

Among the titles included in the present list of contributions are several of special significance as sources of bibliographical information.

The *Guide to the diplomatic History of the United States* by Dr. Bemis and Miss Griffin is of substantial value for its rich store of bibliographical material regarding diplomatic relations between the United States and Hispanic America. It is a work of patient research and fine scholarship.

Economic conditions are covered by *The economic Literature of Latin America, a tentative Bibliography*, compiled by the staff of the Bureau for Economic Research in Latin America of Harvard University.

Of interest in special fields are Dr. Leavitt's *Bibliography of Theses dealing with Hispano-American Literature*, the *Catálogo de Periódicos Sudamericanos existentes en la Biblioteca de la Universidad de La Plata*, Monterde García Icazbalceta's *Bibliografía del Teatro en México*, Peña's *Estudio de los Periódicos y Revistas existentes en la "Biblioteca Enrique Peña"*, "Quién es quién en Puerto Rico, Valle's Mexican Bibliography for 1933 and 1934, Velázquez Chávez's *Índice de la Pintura mexicana contemporánea*, and others that will be noted in the list.

Dr. Martin's *Who's who in Latin America* satisfies a long felt want. There are, to be sure, names missing in its pages that one would like to find, but this is a condition all but inevitable in a work of this character. When, however, one considers the extremely onerous task of planning, assembling the material for, and compiling such a work, it is but small and inadequate praise to say the author deserves well of the republic of letters. It is an indispensable work; a notable achievement. It is to be hoped that Dr. Martin will continue his work, collecting additional material for a second issue when that may be found desirable.

And, in conclusion, Dr. A. Curtis Wilgus, first director of the Center of Inter-American Studies of the George Washington University has published in *Colonial Hispanic America* an excellent and useful bibliographical review of the Histories and Historians of Hispanic America.

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C. K. JONES.

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BOOK NOTES AND OTHER ITEMS

Alien Americans—A Study of Race Relations, by B. Schrieke (New York, The Viking Press, 1936, pp. xi, 208, \$2.50) is an important treatise on certain aliens in the United States. This study was made at the request of the directors of the Julius Rosenwald Fund by a native of the Netherlands who had never before visited the United States, but had spent much time in the Dutch East Indies among the native peoples there, in the capacity of government official and university professor (in a government institution). Dr. Schrieke is a trained ethnologist and attacks his subject from that point of view plus the historical. Until his arrival in this country he had never seen an American Negro. His stay in the United States lasted from September, 1934, until some time after May, 1935. During that time, he visited New York, Washington, and Boston, and the states of Virginia, North Carolina, Georgia, Tennessee, Arkansas, Louisiana, Oklahoma, New Mexico, and California. In these localities and in various other places, he made the personal observations which enabled him to write his book. This he wrote in Chicago, basing his findings on personal observation, reading, and conversation. The volume has the advantage of being written by one who had no preconceived notions or acquaintance with his study which was made in a strictly scientific spirit and by strictly scientific methods. It has the disadvantage of being written without sufficient acquaintance with the subject matter. One would like to know also with whom the author held his conversations and how much he was influenced thereby. Still, the volume must be considered very seriously by students of history and sociology. Most of the volume is concerned with the Negro and his present and future status. There are, however, interesting chapters on the Chinese in California, the Japanese in California, and the Mexican and Indian. The chapter devoted mostly to the Mexicans in the United States is of chief interest here. Important as that subject is, too little space has been given to it; and one is led to the belief that the chief concern of the directors of the Julius Rosenwald Fund was the Negro. The Chinese, Japanese, Mexican, and Indian are rather incidental to the main purpose. Each is worthy of more extended objective treatment. The

matter relative to the Mexicans is interesting and valuable, but the study should be extended greatly, and after a larger acquaintance. If the author could use what he has already written as a basis and, after several years residence among the Mexicans in the United States and even in Old Mexico, he would be in a far stronger position to write a definitive work on this subject. The volume is a capital beginning. Dr. Schrieke has written fearlessly.

The Academia de la Historia de Cuba has recently published another of its imposing series of "Discursos". This is the *Discursos leídos en la Recepción pública del Sr. Gerardo Castellanos G. la Noche del 23 de Abril de 1936*. . . (La Habana, Imprenta "El Siglo XX"—A. Muñiz y Hno., pp. 132). The subject of the address by Sr. Castellanos G. was "Tópicos coloniales en torno de Guanabacoa", and in it the speaker conducted his audience through old cities and sites of Cuba in a most interesting way. Reply to the address was made by Sr. René Lufriú y Alonso.

Fire on the Andes (Philadelphia, J. B. Lippincott and Company, 1934, pp. 482, \$3.00) by Carleton Beals is written with all the journalistic ability of the author's other volumes. The work consists of 29 chapters in four parts, followed by a selected bibliography and an index. The four parts are called respectively, "Children of the Sun" (four chapters) dealing with the aboriginal people and empire, the Spanish conquest, and a chronology of Peru (pp. 85-87) which is divided into the pre-Spanish, the Colonial, and the Independence periods; "People" (six chapters) dealing in general with the people of Peru; "The Knots of the Cord" (eight chapters), which is a description of various Peruvian cities, with anecdotes; and "Lines of Battle" (eleven chapters), which is devoted primarily to classes, trends, and possibilities of modern Peru. As a whole the volume is disappointing, notwithstanding that it is at times brilliantly written. Mr. Beals seems to have as his central theme, indefinite and vague as it appears at times, the gradual development of the country amid almost insuperable barriers that have been built by the ruling class. He shows the various factors at work by numerous quotations, sometimes but apparently not always cited. The book lacks unity and one reads it without any clear idea except that the native people have been exploited terribly. It is good journalistic matter and will doubt-

less be read by a great many people. The impressions gained from it should be corrected from other sources.

J. Frank Dobie, whose *Coronado's Children* met with deserved success, has edited No. XII of the Texas Folklore Society Publications. The title of this new work is *Puro Mexicano* (Austin, 1935, pp. x, 261). This excellent volume should be on the shelves of all workers in Mexican history. The various stories are contributed by some thirteen people including the editor. They touch many angles of the common life of the people. Each story comes from Mexico or from regions formerly settled from Mexico. Some are pure Indian. In them much can be seen of the old customary law of the people as well as the influence of Christianity on their life and customs.

The Harvard University Press at Cambridge, Massachusetts, has recently published (1936) a very interesting volume entitled *Ibsen and Spain: A Study in comparative Drama*, by Halfdan Gregersen (pp. xiv, 209, \$2.50). A short foreword by Professor J. D. M. Ford emphasizes the fact that "Spanish aloofness in respect to things of the outside world is more or less a myth". Dr. Gregersen attempts to show, as his preface points out, how Ibsen's "theater was introduced to Spain, the manner in which it was received there, and what impression it has made upon the Spanish dramatic genius". The volume is of value for the history of the theater and is largely an inquiry into new fields. There is an appendix of "Castillian and Catalan translations of Ibsen's plays"; and a "Bibliography" of two sections—namely, "Ibsen—His Theater and its Diffusion" and "The modern Spanish Theater". It is interesting to note that Dr. Gregersen finds that Galdos was more influenced by the great Norwegian playwright than was Echegaray. The volume is one of the series of "Harvard Studies in Romance Languages".

Helen Garvin is the author of a small pamphlet of 44 pages entitled *Fun and Festival from Latin America*, which was published by The Friendship Press of New York (1935). Miss Garvin acknowledges thanks to Winifred Hulbert, author of *Latin American Backgrounds*, and to Eugene C. Aguirre. This interesting production, which seeks to make Mexico more intimately known north of the Rio

Grande, has sections devoted to Festivals and Holidays, Music, Drama and Sports, Foods, and Bibliography.

Gertrude van Duyn Southworth and John van Duyn Southworth, in their *Early Days in America, 1492-1789* (Syracuse, N. Y., Iroquois Publishing Company, Inc. [1936], pp. ix, 494, XXIII, \$1.32), have treated the period of exploration, the thirteen colonies, the inter-colonial wars, the struggle for independence, and the adoption of the constitution. The contention of the California school of historians under Professor Bolton, to the effect that the history of America can not be restricted alone to the United States, is echoed in this interesting school text. The authors have with good reason given a section to the early period of discovery and explorations—the beginning of the written history of the American continents. The first chapter of this volume, “The Spanish Explorers”, gives in rapid survey (and in easily understood language—for this is a school text for the grades) something of the discoveries and explorations of the new world, including those of Columbus, Ponce de León, Balboa, Cortés, Pizarro, Magellan, Soto, and Coronado. In the chapter on Georgia is narrated something of Oglethorpe’s siege of St. Augustine in 1741—which would have been better had the authors read Dr. Amos A. Ettinger’s recently published life of Oglethorpe. Pages 329-337 give a brief description of “How people lived in the Spanish Colonies”, in which appear something on the social classes, settlements and buildings, clothing, occupations, religion, education, pastimes, punishments, food, and government. Another section (pp. 337-344) deals in like manner with “How people lived in the Portuguese Colony of Brazil”. As a whole, the volume is of the newer type of history teaching for the young.

Hacienda, by Katharine Anne Porter (New York, 1934, pp. 81) is the thirteenth publication of Harrison of Paris. The format of the volume was designed by Monroe Wheeler and its printing was performed by the Haddon Craftsmen, at Camden, New Jersey. The edition consists of 895 copies on Arnold English unbleached pure-rag paper. In its attractive slip case, the book is handsome and striking. The author of this character study expressly states that “all characters and situations in this story are entirely fictional, and do not portray any actual person”. The story has to do with the filming

of life on a pulque plantation in Mexico. There is really little of Mexico in the volume besides the stage setting, for the story is mainly a study of the several types that have come from Hollywood and of the master and mistress of the plantation. For the rest, the story seems forced, although couched in pure, limpid English.

Another contribution to the history of the war with Mexico comes in the *Journals of the late Brevet Major Philip Norbourn Barbour, Captain in the 3rd Regiment, United States Infantry, and his Wife Martha Isabella Hopkins Barbour* (New York, G. P. Putnam's Sons, 1936, pp. 187). The diaries, which were written in 1846, have been edited with a foreword by Rhoda Van Bibber Tanner Doubleday, granddaughter of the writers. Martha Isabella Hopkins (1824-1888) was the daughter of Jacob Bugg Hopkins, son of that General Samuel Hopkins who served as one of Washington's aides-de-camp. Philip Norbourn Barbour (1813-1846) served in Florida and other places before the outbreak of the war with Mexico. He and his wife were cousins, and were married in 1843. Philip participated in the battles of Palo Alto and Resaca de las Palmas, for special bravery in the latter being brevetted major. He was killed at the battle of Monterey, September 21, 1846. His journal, begun March 28, 1846, when General Taylor encamped on the left bank of the Rio Grande opposite Matamoras, is written in a clear, forcible manner. Barbour does not hesitate to criticise General Taylor at times, although he is also equally careful to praise him. Of the Mexican forces, he says (p. 25) "The Mexican officers I have seen are polished in their manners and fine looking fellows. But their soldiers are half-starved looking devils and excite in us only feelings of contempt". Again he says (p. 26): "An enterprising General might have cut us to pieces any night since our arrival here. However, I do not mean to censure General Taylor for he must have information that we know nothing about". Speaking of the musical ability of the Mexicans, he says (p. 26): "I listened with much delight to the exquisite music of one of their fine bands. It surpassed anything I have ever heard from a military band". He notes numerous instances of deserters from the United States army, some of whom joined the Mexicans and others of whom were killed in the attempt to desert. Some slaves, also, he says, who were serving in the capacity of body servants to United States officers, deserted to the enemy. In describing the battle of May 9, 1846, he says (p. 62):

"General Taylor has won for himself a name second to none since the days of Washington, in this country, except perhaps Jackson". And on p. 75, he voices a criticism that has been heard in every war in which the United States has been engaged: "The army is treated shamefully with regard to tents. There is unpardonable neglect somewhere". Barbour's Journal No. 1, begun March 28, ends June 2. A second journal was begun on June 4. In this, as well as the preceding journal, there are many fine little personal touches. The volunteers come in for a criticism (p. 81): "Volunteers are playing the devil and disgracing the country in Matamoras". The last entry was written on September 20, the night before the battle of Monterey. Mrs. Barbour's journal was begun July 1, after her husband had visited her at Galveston. It is usually quite personal in tone.

The well known Cuban historian, Dr. Emeterio S. Santovenia has undertaken the publication of a new review in La Habana, called *Isla*, whose aim is to present a critical survey of contemporary politics, economics, and culture. The journal is issued twice monthly, ten numbers having appeared by the end of August, 1936. Marked attention is given to problems of Cuban concern. The contributors include some of the most distinguished names in present day Cuban life: Fernando Ortiz, Jorge Mañach, Roberto Agramonte, Camila Henríquez Ureña and others. An excellent digest of current events in Cuba and in Hispanic America generally is a regular feature of *Isla*. The address is Apartado 1692, La Habana, Cuba.—R. P.

The indefatigable Fernando Ortiz, to whom so many Cuban cultural enterprises owe their existence, has begun the publication of a review of reviews, called *Ultra*. Modeled on *Síntesis* of Mexico and the *Reader's Digest* of the United States, *Ultra* serves as the organ of the recently revived Institución Hispano-Cubana de Cultura. Two numbers have been issued to date. With rare exceptions the journal reproduces articles and studies from abroad with no attempt to reprint materials published in Cuba itself. Numerous articles of a scientific and literary nature, a select bibliography of contemporary Spanish language books and notes on the activities of the Institución Hispano-Cubana de Cultura, constitute the content of this excellently presented and printed magazine. The address is Apartado 1649, La Habana, Cuba.—R. P.

An interesting source for a synthesis of Cuban history is the series of Cuadernos de la Universidad del Aire, issued during 1933 and 1934 by this institution for the popular diffusion of culture. Among the contributions worthy of special mention are *Bolívar y las Repúblicas americanas* from the pen of Emeterio Santovenia; *Imperialismo y nacionalismo en el siglo XIX*, by Elias Entralgo; *Cuba hasta 1837* by the same scholar; *Cuba de 1868 a 1898* by Félix Lizaso and other important contributions by Jorge Mañach, Francisco Ichaso, Roberto Agramonte and others.—R. P.

It would almost seem that there are enough books on Columbus and that the appearance of a new one may be justified only if some new material about the Discoverer comes to light. But ever since books have been written one great aim of authors has been to make money; and this excuse seems to be the only one which could possibly justify the appearance of *Christopher Columbus. The Tragedy of a Discoverer*, by H. H. Houben and translated by John Linton (New York: E. P. Dutton, Inc., 1936. Pp. viii, 308. \$3.50). The volume is written in a flippant manner in the form of an historical novel with imaginary conversations and other fictional trimmings. True, the essential facts are dated, but there is no confirmation of them. There are no footnotes, bibliographies, or index. The work contains nothing new and the interpretation is not even up to date. The story, however, is well told and the background picture is painted in vivid colors.—A. C. W.

Among the travel books concerning Mexico which are constantly appearing are three of some interest. In *Trailing Cortez through Mexico* by Harry A. Franck (New York, Frederick A. Stokes Co., 1935, pp. xviii, 373, illus. \$3.50), the author supplies his reading public—which must be a large one—with another book. This volume tells the author's experiences in trying to follow the trail of Hernando Cortés in Mexico, and it gives his thoughts and opinions about the land and its people and about the problems of Cortés's day and of the present troubled times. The book is interesting and well illustrated like other Franck books, and it contains valuable information for the prospective auto tourist in Mexico.—A. C. W.

A second volume is *Mexican Odyssey* by Heath Bowman and Stirling Dickinson, with a foreword by José Mojica (Chicago, Willett,

Clark and Co., 1935, pp. 292, illus. \$2.50). This is a delightful travel account by a writer, a painter, and a girl who bumped through Mexico in an old Ford from Laredo to Oaxaca and back to El Paso. What they saw they recorded in an interesting and understanding fashion, in picture and story, and they seem to have caught the spirit of Mexico better than most tourist-writers.—A. C. W.

A third book will be found of special interest to citizens of the United States who contemplate a trip along the Mexican section of the Pan American highway. The story is told by Mr. Joseph Henry Jackson, literary editor of the San Francisco *Chronicle*, who with Mrs. Jackson drove from Laredo to Mexico City keeping their eyes and ears open for sights and sounds, and remembering what they saw and heard. They have well called their book a *Mexican Interlude* (New York, The Macmillan Co., 1936, pp. xii, 232, illus. \$2.50). The photographs are most excellent, and the volume is interesting in every respect.—A. C. W.

COMMUNICATION

To the Editor of THE HISPANIC AMERICAN HISTORICAL REVIEW:
Sir:

Dr. Ronald Ives, in the February (1936) issue of this REVIEW, presents the argument that Melchior Díaz, of the Coronado party, followed a route along the Gulf of California in order to reach the lower Colorado Valley. This is a hoary, minor myth of American exploration which Dr. Ives has resurrected and to the acceptance of which he has been persuaded because he has been impressed by the occurrence of beach springs along this coast. None of the evidence in the Díaz record supports his contention, and there is sufficient historical and geographic evidence to refute the argument.

Dr. Ives's statement "that the Sonora desert region has become noticeably more dry in recent years" I am unable to accept for historic time and I have presented evidence to the contrary in terms of archaeological data.¹

The vague account by Mota Padilla, on which Dr. Ives appears to draw, can be disregarded. Mota Padilla wrote an interpretative his-

¹ Carl Sauer and D. D. Brand, "Prehistoric Settlements of Sonora, with special Reference to Cerros de Trincheras", in *Univ. Calif. Publ. Geog.*, V., No. 3, 1931.

tory two centuries after the event, was notoriously weak in his geography, as anyone knows who has used him with care, and gives no indication of having had access to any sources which we do not have. In the Coronado narrative by this historian numerous errors can be found; neither the exact sequence of time nor of place was of special importance to Mota Padilla.

The known sources on the Díaz expedition are still only those which were collected by George Parker Winship, principally the account by Castañeda and the so-called "Relación del Suceso". The known facts are: (1) the party started from the Spanish settlement in the Valley of Señora (Sonora). (2) The route was northwesterly for a hundred and fifty leagues. (3) Indian guides directed the party. (4) In good Spanish fashion, the meat supply, in this case sheep, was driven along. (5) A river valley was reached which was populated by gigantic Indians. The account of people, valley, and stream leaves no doubt that the Lower Colorado is described. These precious and intelligible notes on life and country have been scrutinized too often by ethnologists and historians to need review, yet Dr. Ives would see in these "giants" the Seri! In his fanciful reconstruction Dr. Ives next would have an extreme southern band of Papago feed the Spaniards corn and fish, disregarding the fact that these Papago have an extreme aversion to fish and that they probably would have had little or no corn, aside from the fact that there is no indication that the Díaz party got within a hundred miles of this desolate country southeast of Puerto Libertad. Both contemporary accounts agree that the party reached the (Colorado) River well above its mouth. The "Relación del Suceso" places the point thirty leagues from the coast. The Castañeda account says that they came to the river three days' travel above the place where Alarcón's ships had been, that they descended to this place, which was more than fifteen leagues upstream from the mouth, and that the captain turned up-river without seeing the sea.

There is little doubt as to the general route followed, which throughout was inland, though hardly the alternative route indicated on Dr. Ives's map. The Spanish settlement was not at Ures, as Dr. Ives supposes, but in the Sonora Valley, well up-stream. Ures lies below the gorge of the Sonora River and the term "Sonora Valley" is always restricted to a basin farther north. The Spanish settlement was probably in the vicinity of Huepac.²

² The whole question of the Town of the Hearts and of the Spanish bases is discussed by me in "The Road to Cibola", in *Ibero-Americana*, No. 3, 1932.

Good trails with plenty of water and pasture lead northwestward to the Altar Valley. Beyond is a choice of several routes to Sonoita (Sonoyta), just south of the American border. The rest of the route was almost inevitably the Camino del Diablo to or toward the mouth of the Gila, well described by Bolton, Sykes, and others, over which missionaries, military, and emigrants passed for centuries. This general route fits all the data that we have on the Díaz expedition without any contradiction. Note, for instance, the remark in the "Relación del Suceso" that "the settlements and people that are in this direction mostly are like those at the Hearts", a completely valid statement of ethnic conditions along this route, but utterly inapplicable to Dr. Ives's coast route.³

From the data at hand it would be idle to attempt to map the route between Huepac and Sonoita, since there are equally good alternatives as much as fifty miles apart. These possible routes were well-used Indian trails and they appear familiarly throughout the colonial literature. Bolton has traced and retraced them from Kino to Anza. They are still the only sensible ways of passing through this country and they are also the shortest routes to the lower Colorado. Indian trails are remarkably direct, relief and water permitting. In this case, water and pasture favored and relief did not prevent a nearly straight line of travel from Sonora to the Colorado Valley.

The party was steered by Indian guides who had much better sense than to undertake the bizarre, circuitous expedition along the coast, imagined by Dr. Ives. I know of no case in history of any party that made its way along this coast. It still remains to be seen whether such a journey could be carried out at all. Even though there be here and there springs along the coast, usually available only at low tide, it is frightfully far between watering places. What average rate of travel could be maintained over a long journey with a flock of sheep? The coastal vegetation is desperately poor, especially for sheep. Were there no evidence of the route taken, a knowledge of the desert coast of northwest Sonora would nevertheless indicate it as the least possible of all land ways to the lower Colorado.

Dr. Ives's whole case comes down to his statement: "The argument against the inland route was this: Would an explorer, seeking to contact a sea expedition on a sea which was easily reached by

³ Carl Sauer, "The Distribution of Aboriginal Tribes and Languages in Northwestern Mexico", in *Ibero-Americana*, No. 5, 1934.